

PUBLIC DRAFT

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South Carolina Deed Recording Fee Manual

SOUTH CAROLINA DEPARTMENT OF REVENUE

TAX POLICY SERVICES DIVISION

Henry D. McMaster, Governor | W. Hartley Powell, Director | **Month** 2023

DISCLAIMER

S.C. Revenue Ruling #23-___, which incorporates this publication in its entirety, hereby supersedes S.C. Revenue Ruling #17-5 and S.C. Revenue Procedure #15-1. Accordingly, these advisory opinions should no longer be consulted after the issuance of S.C. Revenue Ruling #23-___, which incorporates this publication. This Manual will serve as the Department's position on the issues addressed herein until superseded or modified by a change in statute, regulation, court decision, or a subsequent Department advisory opinion. Nothing in this Manual supersedes, alters, or otherwise changes provisions of the South Carolina code or regulations.

Table of Contents

INTRODUCTION.....	1
LAW and DISCUSSION	1
QUESTIONS and ANSWERS	
Value (Questions 1 – 4)	7
Responsible Person Signing the Affidavit (Question 5)	11
Realty Located in More Than One County (Question 6).....	11
Unrecorded Deeds (Question 7)	12
Refunds (Question 8)	12
Gifts from One Individual to Another Individual (Question 9)	12
Family Deeds (Questions 10 – 12)	13
Charitable Deeds (Questions 13 – 14)	15
Deeds from an Estate (Questions 15 – 16)	17
Deeds to and from Trusts (Questions 17 – 18).....	18
Deeds to and from Partnerships (Questions 19 – 22)	20
Limited Liability Company (LLC) Deeds (Questions 23)	22
Deeds to and from Corporations (Questions 24 – 27).....	23
Master-in-Equity Deeds (Question 28)	24
Foreclosure Deeds (Questions 29 – 31).....	25
Chapter 7 Bankruptcy Deeds (Question 32)	26
Chapter 11 Bankruptcy Deeds (Question 33)	27
Chapter 12 Bankruptcy Deeds (Question 34)	27
Chapter 13 Bankruptcy Deeds (Question 35)	27
State and Local Government Deeds (Questions 36 – 38).....	28
Federal Government Deeds (Questions 39 – 40)	29
Federal Credit Union Deeds (Questions 41 – 42)	29
Government National Mortgage Assoc. Deeds (Questions 43 – 44).....	30
Farm Credit Bank Deeds (Questions 45 – 46)	30
Production Credits Association Deeds (Questions 47 – 48)	31
Federal Land Bank Association Deeds (Questions 49 – 50).....	31
Federal National Mortgage Association “Fannie Mae” Deeds (Questions 51 – 52)	32
Federal Home Loan Mortgage Corp. “Freddie Mac” Deeds (Questions 53 – 54)	32
Timeshare Deeds (Questions 55 – 56)	33
Manufactured Homes (Question 57).....	34
Timber Deeds (Question 58).....	34
Mineral Rights (Question 59).....	34
Easements and Right-of-Ways (Question 60).....	35
Deeds to Obtain Construction Loans (Questions 61 – 63).....	35
Charter Schools authorized under Chapter 40 of Title 59 (Question 64 – 65)	36
Agent to Principal Transfers (Question 66).....	37

QUESTIONS and ANSWERS CON'T

Internal Revenue Code Section 338(h)(10) Election (Question 67).....	37
Community Land Trust (Question 68 – 71).....	38
Waiving the Affidavit (Question 72)	39
Deeds Recorded in the Wrong County (Question 73)	39
Liability for the Deed Recording Fee (Question 74).....	40

PROCEDURAL and OTHER ISSUES

Remittance of Fee in the County in which the Realty is Located	41
Remittance of Fee for Realty Located in More than One County	41
Notation on the Instrument.....	41
Affidavit of Value	42
Components of the Fee	42
Monthly Reports	43
Refund Procedures.....	43

SUMMARY of GOVERNMENTAL TRANSACTIONS..... 47

SAMPLE AFFIDAVITS..... 48

Affidavit for Taxable or Exempt Transfers	50
Affidavit for Exempt Transfers.....	53
Examples for Completion of Fee Calculation Portion of Affidavit.....	55

Introduction and Law and Discussion

Introduction

South Carolina imposes a deed recording fee pursuant to Chapter 24 of Title 12 for the privilege of recording a deed in which land and improvements on the land, tenements, or other realty is transferred to another person.¹ The fee is one dollar eight-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value as determined by S.C. Code Ann. § 12-24-30 (2014).² This fee is split such that the state receives a portion and the county receives a portion. The state fee is one dollar thirty cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value and the county fee is fifty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value.³

Except for circumstances listed in S.C. Code Ann. § 12-24-20(B) (2014), the fee is the liability of the grantor, or the joint and several liability of the grantors, but the grantee is secondarily liable for the payment of the fee.⁴ The fee is collected by the office of the clerk of court or register of deeds, which remits the state portion of the fee to the Department of Revenue on a monthly basis.⁵

The purpose of this manual is to provide a comprehensive discussion of the application of the deed recording fee to a wide variety of real estate transactions. Much of the information within this publication can also be found in Regulation 117-1350 of the South Carolina Code of State Regulations.

Law and Discussion

S.C. Code Ann. § 12-24-10 (2014) imposes the deed recording fee and reads:

(A) In addition to all other recording fees, a recording fee is imposed for the privilege of recording a deed in which land and improvements on the land, tenements, or other realty is transferred to another person. The fee is one dollar eighty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value as determined by Section 12-24-30.

¹ See S.C. Code Ann. § 12-24-10(A) (2014)

² See S.C. Code Ann. § 12-24-10(A) (2014)

³ See S.C. Code Ann. § 12-24-90(A)(1)-(2) (2014); S.C. Code Ann. Regs. 117-1350 (2012)

⁴ See S.C. Code Ann. § 12-24-20(A) (2014)

⁵ See Regulation 117-1350

(B) An instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent's estate pursuant to Section 62-3-907 as evidence of the distributee's title to the property is not a deed subject to this chapter. In addition, a deed transferring real property from a trust to a trust distributee upon the trust settlor's death, pursuant to the trust terms, is not a deed subject to this chapter if a deed of distribution would be the appropriate instrument to transfer the subject property if the property were part of the decedent's probate estate.

Accordingly, the deed recording fee is imposed for the privilege of recording a deed based on the transaction of transferring realty from one person to another person.⁶

Next, S.C. Code Ann. § 12-24-20 (2014) establishes who is obligated to pay the deed recording fee and reads:

(A) Except as provided in subsection (B), the fee imposed by this chapter is the liability of the grantor, or the joint and several liability of the grantors, but the grantee is secondarily liable for the payment of the fee.

(B) In the case of a master-in-equity deed, a deed from the federal government, a state or any of a state's political subdivisions, or a qualified retirement plan exempt from income taxes under the Internal Revenue Code to another person, the fee imposed by this chapter is the liability of the grantee, or the joint and several liability of the grantees, and not the grantor.

A "Grantor" is "someone who conveys property to another."⁷ A "Grantee" is "one to whom property is conveyed."⁸

Then S.C. Code Ann. § 12-24-30 (2014) defines the term "value."

(A) For purposes of this chapter, the term "value" means the consideration paid or to be paid in money or money's worth for the realty including other realty, personal property, stocks, bonds, partnership interest, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or

⁶ See Regulation 117-1350.1

⁷ BLACK'S LAW DICTIONARY (11th ed. 2019), *grantor*

⁸ BLACK'S LAW DICTIONARY (11th ed. 2019), *grantee*

owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, “value” means the realty’s fair market value.

(B) A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.⁹

(C) Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

Thus, when the consideration paid for realty is money, the deed recording fee is based on the money paid or to be paid.¹⁰ In these situations, the deed recording fee cannot be based on fair market value of the property being transferred.¹¹

When the consideration paid for realty is “money’s worth” (e.g. other realty, stocks, forgiveness of debt), then the taxpayer must base the deed recording fee upon one of the following:

- a. The fair market value of the consideration paid; or
- b. The fair market value of the realty being transferred.

When the taxpayer chooses to base the deed recording fee on the fair market value of the realty being transferred, the taxpayer can use either of the following valuation methods:

1. Based on the true fair market value of the realty; or
2. Based on the fair market value as determined for property tax purposes of the realty.

When the realty is being “transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or the realty is being “transferred to a trust or as a distribution to a trust beneficiary,” then the taxpayer must base the deed recording fee upon the fair market

⁹ With respect to the above deduction from “value” in section 12-24-30(B), S.C. Code Ann. § 12-59-140(E)(6) reads:

Deductions from “value” pursuant to Section 12-24-30(B) shall include any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.

¹⁰ See Regulation 117-1350.1

¹¹ See Regulation 117-1350.2

value of the realty. For purposes of determining the fair market value of the realty, the taxpayer may use the true fair market value of the realty or the fair market value of the realty as determined for property tax purposes.

It should also be noted that a “deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.” As such, when the fair market value of the realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty’s fair market value before calculating the deed recording fee due.

Affidavits for Value

S.C. Code Ann. § 12-24-70 (2014) **requires** the filing of an affidavit stating the value of the property (with some exceptions) with the clerk of court or the register of deeds.

(A)(1) The clerk of court or register of deeds **shall require** an affidavit showing the value of the realty to be filed with a deed. The affidavit required by this section must be signed by a responsible person connected with the transaction, and the affidavit must state that connection. The clerk of court or register of deeds, at his discretion, may waive the affidavit requirement.

(2) For deeds exempt from the provisions of this chapter, the value is not required to be stated on the affidavit, but the affidavit must state the reason the deed is exempt from the fee.

(B) The clerk of court or register of deeds shall file these affidavits in his office.

(C) A person required to furnish the affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(D) An affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title.

(Emphasis added). While the requirement to file the affidavit may be waived by the clerk of court or register of deeds, a waiver should not be granted arbitrarily and the clerk/register should neither abuse his/her discretion nor act outside of his/her lawfully delegated authority in waiving the affidavit of value.

Exemptions

The General Assembly has enumerated several exemptions to the deed recording fee in S.C. Code Ann. § 12-24-40 (2014). The following deeds are exempt from the fee:

1. Deeds transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
2. Deeds transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
3. Deeds that are otherwise exempted under the laws and Constitution of this State or of the United States;
4. Deeds transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A)¹²;
5. Deeds transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
6. Deeds transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
7. Deeds that constitute a contract for the sale of timber to be cut;
8. Deeds transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration or transfers from a trust established for the benefit of a religious organization to the religious organization, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;

¹²Section 1041 of the Internal Revenue Code indicates that this exemption applies only to (1) transfers to a spouse or (2) transfers to a former spouse when the transfer is incident to a divorce. A transfer is incident to a divorce if it occurs within 1 year after the date on which the marriage ceases or is related to the cessation of the marriage.

9. Deeds transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any them, and the grantor's and grantor's spouse's heir under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
10. Deeds transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
11. Deeds transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
12. Deeds that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
13. Deeds transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;
14. Deeds transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
15. Deeds transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

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Questions and Answers

Questions and Answers

The following are questions and answers concerning common real estate transactions and issues.¹³

VALUE:

1. What is the basis for the deed recording fee?

The basis for the deed recording fee is the realty's "value." Code Section 12-24-30 defines the term "value" and states:

- (A) For purposes of this chapter, the term "value" means the consideration paid or to be paid in money or money's worth for the realty including other realty, personal property, stocks, bonds, partnership interest, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value.
- (B) A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.
- (C) Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

In addition to the deduction from "value" allowed by Code Section 12-24-30(B), Section 12-59-140(E)(6) allows a deduction for any lien or encumbrance on realty in possession of a

¹³ These questions and answers are quoted from Regulation 117-1350.2, with the exception of any italicized language, which has been included as further explanation and clarification where the Department determined such clarification would be beneficial.

forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.

2. If realty is transferred for money, and not money's worth such as services, other realty, forgiveness of debt, etc., what is the basis for the deed recording fee if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

Code Section 12-24-30, in subsection (A), states that the fair market value of the realty may be used "in determining fair market value of the consideration under the provisions of this section." The only mention to fair market value in subsection (A) concerns when the consideration is in money's worth, or when the transaction involves a business entity and its owners or a trust. Subsection (C) allows the fair market value for property taxes to be used again only "in determining fair market value under the provisions of this section."

Therefore, if realty is transferred for money, and not money's worth, the basis for the deed recording fee is the money paid or to be paid if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary. The realty's fair market value cannot be used in this case.

3. If realty is transferred for money's worth, such as services, other realty, forgiveness of debt, etc., what is the basis for the deed recording fee if the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

If realty is transferred for money's worth, such as services, other realty, forgiveness of debt, etc., and the transaction does not involve realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary, then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the consideration paid,
- (b) the fair market value of the realty being transferred, or
- (c) the fair market value for property tax purposes of the realty being transferred.

In other words, when the consideration paid for realty is "money's worth," the taxpayer must base the deed recording fee upon either the fair market value of the consideration paid in "money's worth," or the fair market value of the realty being transferred.

When the taxpayer chooses to base the deed recording fee on the fair market value of the realty being transferred, the taxpayer can use either of the following valuation methods:

- 1. Based on the true fair market value of the realty; or*
- 2. Based on the fair market value as determined for property tax purposes of the realty.*

It should also be noted that a “deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.”¹⁴ As such, when the fair market value of the realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty’s fair market value before calculating the deed recording fee due.

4. What is the basis for the deed recording fee if the transaction involves realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or realty transferred to a trust or as a distribution to a trust beneficiary?

When the realty is being “transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or the realty is being “transferred to a trust or as a distribution to a trust beneficiary,” then the taxpayer must base the deed recording fee upon one of the following:

- (a) the fair market value of the realty being transferred, or
- (b) the fair market value for property tax purposes of the realty being transferred.

In other words, when such transfer occur, the taxpayer must base the deed recording fee upon the fair market value of the realty being transferred. In doing so, the taxpayer may elect to use the fair market value of the realty as determined for property tax purposes.

It should also be noted that a “deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer.”¹⁵ As such, when the fair market value of the

¹⁴ Code Section 12-59-140(E)(6) provides that “[d]eductions from ‘value’ pursuant to Section 12-24-30(B) shall include any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.”

¹⁵ See footnote 14.

realty being transferred is used to calculate the fee, the value of the lien or encumbrance qualifying for this deduction may be deducted from the realty's fair market value before calculating the deed recording fee due.

Note: With respect to the issue of “value” as defined in the deed recording fee law, the following are examples of the “value” used in determining the deed recording fee due:

TRANSACTION	VALUE
Realty transferred from John Doe to Jerry Public for \$1,000 and the assumption of a mortgage with a balance of \$81,000.	\$1,000 Since the mortgage existed on the realty before the transfer and remained on the realty after the transfer, the \$81,000 is deducted from the total consideration of \$82,000.
Realty transferred from John Doe to Jerry Public for \$82,000 The grantee ¹⁶ paid \$1,000 down and \$81,000 at closing by obtaining a mortgage at a local financial institution.	\$82,000 Since the mortgage did not exist on the realty before the transfer, the \$81,000 cannot be deducted from the total consideration of \$82,000.
Realty transferred from John Doe to XYZ Bank for cancellation of debt. The balance due on the debt, plus accumulated interest, is \$121,000. This is not a deed in lieu of foreclosure.	\$121,000 By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$121,000 if the fair market value of the realty is less than \$121,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.
Realty transferred from John Doe to Jerry Public for the cancellation of a debt, not associated with the realty, of \$50,000.	\$50,000 By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$50,000 if the fair market value of the realty is less than \$50,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.

¹⁶ The text of Example 2 in Regulation 117-1350.1 says that the “grantor paid \$1,000 down.” This appears to be a misprint and the Department has corrected it here to say “grantee” instead of “grantor.”

TRANSACTION	VALUE
Realty transferred from XYZ Corporation to one of its stockholders - John Doe. The fair market value of the realty for property tax purposes is \$90,000. No lien or encumbrance existed on the realty prior to the transfer.	\$90,000 By statute, the fair market value of the realty must be used in calculating the fee due in a transaction between a corporation and one of its stockholders. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the law.

RESPONSIBLE PERSON SIGNING THE AFFIDAVIT:

5. Who may sign the affidavit required under Code Section 12-24-70?

The affidavit required under Code Section 12-24-70 must be signed by a responsible person connected with the transaction and the affidavit must state that connection. A “responsible person connected with the transaction” includes, but is not limited to, the grantor, grantee, and an attorney involved in the transaction. However, secretaries, paralegals, runners, and other administrative personnel do not qualify as a “responsible person connected with the transaction” and, therefore, may not sign the affidavit.

REALTY LOCATED IN MORE THAN ONE COUNTY:

6. If realty is located in more than one county, how should the deed recording fee be paid when the deed is filed in each county?

Code Section 12-24-50 answers this question and states:

The fee imposed by this chapter must be remitted to the clerk of court or the register of deeds in the county in which the realty is located and recorded. If the realty is located in more than one county, the person having the deed recorded in a county must state by affidavit what portion of the value of the realty is in that county and payment of the fee must be made based on the proportionate value of the realty located in that county.

For example, ABC Corporation sells realty, approximately 10 acres, to XYZ Corporation for \$1,000,000. The realty is located in two counties, with 3 acres in County A and 7 acres in County B. However, because of the location of the 3 acres in County A (e.g., located at a major intersection, on the waterfront, etc.), the value of the 3 acres in County A is \$700,000 while the value of the 7 acres in County B is \$300,000.

Based on these values, 70% of the value is assigned to County A and both the state and county portions of the deed recording fee are paid in County A based on \$700,000 consideration paid (Total Fee Paid in County A: \$2,590 (\$1,820 State Fee and \$770 County A Fee)). The remaining 30% of the value is assigned to County B and both the state and county portions of the deed recording fee are paid in County B based on \$300,000 consideration paid (Total Fee Paid in County B: \$1,110 (\$780 State Fee and \$330 County B Fee)).

UNRECORDED DEEDS:

7. Are deeds that transfer realty but are not recorded at the courthouse (the office of the clerk of court, register of deeds, register of mesne conveyance or other recording official) subject to the deed recording fee?

Deeds that transfer realty but are not recorded at the courthouse (the office of the clerk of court, register of deeds, register of mesne conveyance or other recording official) are not subject to the deed recording fee since under Code Section 12-24-10 "recording fee is imposed for the privilege of recording a deed" and therefore the deed recording fee is not applicable until the deed is recorded.

REFUNDS:

8. What are the procedures for applying for a refund of the deed recording fee?

The procedures for applying for a refund of the deed recording fee can be found in the below section entitled "Refund Procedures," located on pages 42 through 44 of this Manual.

GIFTS FROM ONE INDIVIDUAL TO ANOTHER INDIVIDUAL:

9. Are deeds that transfer realty from one individual to another individual as a gift (no consideration paid of any kind) subject to the deed recording fee?

Deeds that transfer realty from one individual to another individual as a gift (no consideration paid of any kind) are exempt from the deed recording fee under Code Section 12-24-40(1).

FAMILY DEEDS:

10. Are deeds that transfer realty to a spouse subject to the deed recording?

Deeds that transfer realty to a spouse are exempt from the deed recording fee under Code Section 12-24-40(4) regardless of whether or not any consideration was paid or will be paid for the transfer.

11. Are deeds that transfer realty to a family member, other than a spouse, subject to the deed recording fee?

Deeds that transfer realty to a family member, other than a spouse, are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds between family members (other than spouses) that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer to a brother for \$30,000.00,
- (b) a transfer to a sister in exchange for the forgiveness of a debt,
- (c) a transfer to a child for \$10,000.00
- (d) a transfer to a brother in exchange for other realty, and
- (e) a transfer to a sister in exchange for paying off the mortgage on the realty.

The following are examples of deeds between family members (other than spouses) that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (c) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (See questions concerning timber deeds.),

- (d) a transfer in which the realty is subject to a mortgage and the family member receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the family member that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.), and
- (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

12. Are deeds that transfer realty to a former spouse subject to the deed recording?

Deeds that transfer realty to a former spouse are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a former spouse that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer in exchange for past due alimony payments when the transfer of the realty is not pursuant to the terms of the divorce decree or settlement,
- (b) a transfer for \$30,000.00,
- (c) a transfer in exchange for the forgiveness of a debt,
- (d) a transfer in exchange for other realty, and
- (e) a transfer in exchange for paying off the mortgage on the realty.

The following are examples of deeds to a former spouse that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer pursuant to the terms of the divorce decree or settlement,
- (c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (d) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (See questions concerning timber deeds.),

- (e) a transfer in which the realty is subject to a mortgage and the former spouse receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the grantor as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.), and
- (f) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

CHARITABLE DEEDS:

13. Are deeds that transfer realty to a church or other charitable organization subject to the deed recording fee?

Deeds that transfer realty to a church or other charitable organization are subject to the deed recording fee based on the consideration paid for the realty¹⁷, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a church or other charitable organization that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer for \$50,000.00,
- (b) a transfer in exchange for other realty whether or not the transaction qualifies as a like-kind exchange for federal income tax purposes (Both deeds are subject to the deed recording fee.)¹⁸, and
- (c) a transfer of realty with a fair market value of \$100,000.00 for only \$50,000.00 (The deed recording fee is based upon \$50,000.00.).

The following are examples of deeds to a church or other charitable organization that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),

¹⁷ If, however, the church or other charitable organization is a stockholder, partner, limited liability company member, or trust beneficiary of the grantor (corporation, partnership, limited liability company or trust), then the deed recording fee is based on the fair market value of the realty or the fair market value of the realty for property tax purposes.

¹⁸ See SC Revenue Ruling #99-2 for a discussion of the application of the deed recording fee to I.R.C. Section 1031 Tax Deferred Exchanges.

- (b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
 - (c) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7)) (See questions concerning timber deeds.),
 - (d) a transfer in which the realty is subject to a mortgage and the church or other charitable organization receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the grantor as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.), and
 - (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.
14. Are deeds that transfer realty from a church or other charitable organization to an individual or business subject to the deed recording fee?

Deeds that transfer realty from a church or other charitable organization to an individual or business are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds to a church or other charitable organization that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer for \$50,000.00, and
- (b) a transfer in exchange for other realty whether or not the transaction qualifies as a like-kind exchange for federal income tax purposes (Both deeds are subject to the deed recording fee.).

The following are examples of deeds from a church or other charitable organization to an individual or business that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),
- (b) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

- (c) a transfer that constitutes a contract for the sale of timber to be cut (12-24-40(7))
(See questions concerning timber deeds.),
- (d) a transfer in which the realty is subject to a mortgage and the individual or business receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the church or other charitable organization as the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.), and
- (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

DEEDS FROM AN ESTATE:

15. Are deeds that transfer realty from an estate to a beneficiary subject to the deed recording fee?

Deeds that transfer realty from an estate to a beneficiary are subject to the deed recording fee based on the consideration paid for the realty, unless otherwise exempt from the deed recording fee. The following are examples of deeds from an estate to a beneficiary that are subject to the deed recording fee unless otherwise exempt under Code Section 12-24-40:

- (a) a transfer pursuant to the will where the will requires the beneficiary to pay a consideration for the realty, and
- (b) a transfer in which the beneficiary of the realty directs the personal representative of the estate to transfer the realty directly to a third party in exchange for a consideration paid to the personal representative or the beneficiary (e.g., cash, forgiveness of a debt, etc.).

The following are examples of deeds from an estate to a beneficiary that are exempt from the deed recording fee under Code Section 12-24-40:

- (a) a transfer in which the consideration that is paid or will be paid is equal to or less than \$100.00 (12-24-40(1)),

(b) a deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent's estate pursuant to Code Section 62-3-907 as evidence of the distributee's title to the property¹⁹, and

(c) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

16. Are deeds that transfer realty from an estate to a third party for a consideration in order to pay off debts of the estate subject to the deed recording fee?

Deeds that transfer from an estate to a third party for a consideration in order to pay off debts of the estate are subject to the deed recording fee if the consideration paid (including debts forgiven) for the transfer of realty is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

DEEDS TO AND FROM TRUSTS:

17. Are deeds that transfer realty into a trust subject to the deed recording fee?

Deeds that transfer realty into a trust are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

- (a) a transfer to a trust by a beneficiary of the trust or by a person who will become a beneficiary of the trust as a result of the transfer as long as no consideration is paid for the transfer other than beneficial interest in the trust or an increase in value in the beneficial interest in the trust (12-24-40(8)),
- (b) a transfer from one family trust to another family trust for the same family, provided no consideration is paid or will be paid for the transfer (12-24-40(8) and 12-24-40(9)),
- (c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

¹⁹ "An affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title." Code Section 12-24-70(D) As such, the exemption is not listed on the sample affidavits. However, if a person wishes to use and file an affidavit stating that the transaction is exempt under Code Section 12-24-10(B), such person may complete the affidavit and reference this exemption and code section.

- (d) a transfer in which the realty is subject to a mortgage and the trust receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.), and
 - (e) a transfer otherwise exempt under the provisions of Code Section 12-24-40.
18. Are deeds that transfer realty from a trust to an individual or other legal entity subject to the deed recording fee?

Deeds that transfer realty from a trust to an individual or other legal entity are subject to the deed recording fee based on the fair market value of the realty if the grantee is a beneficiary of the trust, except for the following deeds:

- (a) a transfer from a family trust to a trust beneficiary as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the family trust (12-24-40(9)),
- (b) a transfer from one family trust to another family trust for the same family, provided no consideration is paid or will be paid for the transfer (12-24-40(8) and 12-24-40(9)),
- (c) a transfer in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (d) a transfer in which the realty is subject to a mortgage and the trust beneficiary receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the family trust that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.),
- (e) a transfer from a trust to a trust distributee upon the trust settlor's death, pursuant to the trust terms, if a deed of distribution would be the appropriate instrument to transfer the subject property if the property were part of the decedent's probate estate (12-24-10(B)),
- (f) a transfer from a trust established for the benefit of a religious organization to the religious organization (12-24-40(8)), and
- (g) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

Deeds that transfer realty from a trust to an individual or other legal entity are subject to the deed recording fee based on the consideration paid or to be paid if the grantee is not a beneficiary of the trust, the consideration paid or to be paid is more than \$100.00, and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: A “family trust” is a trust, in which the beneficiaries are all members of the same family. “Family” means the grantor, the grantor’s spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of them, and the grantor’s and grantor’s spouse’s heir under a statute of descent and distribution.

DEEDS TO AND FROM PARTNERSHIPS:

19. Are deeds that transfer realty from a partner to the partnership subject to the deed recording fee?

Deeds that transfer realty from a partner to the partnership are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

- (a) a transfer from a partner to the partnership if no consideration is paid for the transfer other than additional interest in the partnership or an increase in value in the partner’s interest in the partnership (12-24-40(8)),
- (b) a transfer in order to partition realty owned jointly by the partner and the partnership of which he is a partner, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)), and
- (c) a transfer that is otherwise exempt under Code Section 12-24-40.

However, where the realty being transferred is owned by all of the partners in a partnership and the realty is being conveyed to the partnership, the conveyance is not subject to the deed recording fee, so long as each partner’s percentage of interest in the realty (prior to the conveyance) is the same as his/her percentage of interest in the partnership.

20. Are deeds that transfer realty from the partnership to a partner subject to the deed recording fee?

Deeds that transfer realty from the partnership to a partner, including deeds transferring realty to the partner upon liquidation of the partnership, are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

- (a) a transfer from a family partnership to a partner as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership (12-24-40(9)),
- (b) a transfer in order to partition realty owned jointly by the partner and the partnership of which he is a partner, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),
- (c) a transfer in which the realty is subject to a mortgage and the partner receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the partnership that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). Note: See questions concerning foreclosure proceedings, and
- (d) a transfer otherwise exempt under the provisions of Code Section 12-24-40.

Note: A "family partnership" is a partnership whose partners are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of them, and the grantor's and grantor's spouse's heir under a statute of descent and distribution.

21. Are deeds that transfer realty from a non-partner to a partnership, or from a partnership to a non-partner, subject to the deed recording fee?

Deeds that transfer realty from a non-partner to a partnership are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from a non-partner to the partnership is exempt from the deed recording fee.

22. If Partnership A and Partnership B have the same partners but neither partnership is a partner in the other, is a deed that transfers realty from Partnership A to Partnership B subject to the deed recording fee?

If Partnership A and Partnership B have the same partners but neither partnership is a partner in the other, then a deed that transfers realty from Partnership A to Partnership B is subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from Partnership A to Partnership B is exempt from the deed recording fee.

LIMITED LIABILITY COMPANY (LLC) DEEDS:

23. How are deeds that transfer realty to and from a limited liability company ("LLC") treated under the deed recording fee law?

Deeds that transfer realty to and from an LLC, which is treated as a partnership for South Carolina income tax purposes, are treated in the same manner under the deed recording fee as deeds that transfer realty to and from a partnership. See the section in this publication concerning deeds to and from partnerships.

Deeds that transfer realty to and from an LLC, which is treated as a corporation for South Carolina income tax purposes, are treated in the same manner under the deed recording fee as deeds that transfer realty to and from a corporation. See the section in this publication concerning deeds to and from corporations.

Deeds that transfer realty to and from a single member LLC ("SMLLC"), which is treated as a corporation for South Carolina income tax purposes, are treated in the same manner under the deed recording fee as deeds that transfer realty to and from a corporation. See the section in this publication concerning deed to and from corporations.

Deeds that transfer realty to the SMLLC from its single member, and deeds that transfer realty to the single member of the SMLLC from the SMLLC, are not subject to the deed recording fee if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B).

Deeds that transfer realty from the SMLLC to a person who is not the single member, and deeds that transfer realty from a person who is not the single member to the SMLLC, are treated as if the realty were transferred from or to the single member if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B). As such, the application will depend on the facts and circumstances of the transfer and on whether the single member is an individual, partnership, LLC, trust or corporation.

Written instruments whereby a single member transfers its interest in the SMLLC to another person are treated as if the realty were transferred from the single member to the other person if the SMLLC is ignored for all tax purposes under the provisions of Code Section 12-2-25(B). As such, the application will depend on the facts and circumstances of the transfer

and on whether the single member selling the interest is an individual, partnership, LLC, trust or corporation and whether the person purchasing the interest, the new single member, is an individual, partnership, LLC, trust or corporation.

DEEDS TO AND FROM CORPORATIONS:

24. Are deeds that transfer realty from a stockholder to the corporation subject to the deed recording fee?

Deeds that transfer realty from a stockholder to the corporation are subject to the deed recording fee based on the fair market value of the realty, except for the following deeds:

- (a) a transfer from a stockholder to the corporation if no consideration is paid for the transfer other than stock in the corporation or an increase in value in the stockholder's stock in the corporation (12-24-40(8)),
- (b) a transfer in which the realty is subject to a mortgage and the corporation receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the stockholder that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (See questions concerning foreclosure proceedings.),
- (c) a transfer in order to partition realty owned jointly by the stockholder and the corporation of which he is a stockholder, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)), and
- (d) a transfer that is otherwise exempt under Code Section 12-24-40.

25. Are deeds that transfer realty from the corporation to one of the stockholders subject to the deed recording fee?

Deeds that transfer realty from the corporation to one of the stockholders, including deeds transferring realty to the stockholder upon dissolution of the corporation, are subject to the deed recording fee under Code Section 12-24-40(8) except for the following deeds:

- (a) a transfer in order to partition realty owned jointly by the stockholder and the corporation of which he is a stockholder, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition (12-24-40(5)),

- (b) a transfer in which the realty is subject to a mortgage and the stockholder receiving the realty is the mortgagee and the transfer constitutes a deed in lieu of foreclosure executed by the corporation that is the mortgagor or a deed executed pursuant to a foreclosure proceeding (12-24-40(13)). (Note: See questions concerning foreclosure proceedings), and
 - (c) a transfer otherwise exempt under the provisions of Code Section 12-24-40.
26. Are deeds that transfer realty from a non-stockholder to a corporation, or from a corporation to a non-stockholder, subject to the deed recording fee?

Deeds that transfer realty from a non-stockholder to a corporation are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or will be paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from a non-stockholder to the corporation is exempt from the deed recording.

27. If Corporation A and Corporation B have the same stockholders but neither corporation is a stockholder in the other, is a deed that transfers realty from Corporation A to Corporation B subject to the deed recording fee?

If Corporation A and Corporation B have the same stockholders but neither corporation is a stockholder in the other, then a deed that transfers realty from Corporation A to Corporation B is subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

If a consideration of \$100.00 or less is paid or will be paid or the transfer is otherwise exempt under Code Section 12-24-40, then the deed transferring realty from Corporation A to Corporation B is exempt from the deed recording fee.

MASTER-IN-EQUITY DEEDS:

28. Are deeds that transfer realty from a Master-in-Equity to an individual or business subject to the deed recording fee?

Deeds that transfer realty from a Master-in-Equity to an individual or business are subject to the deed recording fee, with the grantee liable for the fee under the provisions of Code Section 12-24-20(B), unless the transfer is otherwise exempt under Code Section 12-24-40.

Note: Since the liability for the deed recording fee has shifted to the grantee in the case of a Master-in-Equity deed, the deed may be exempt if the grantee is otherwise exempted by law. For example, the following deeds are exempt from the deed recording fee when the grantor is a Master-in-Equity:

<u>Grantee</u>	<u>Reason for Exemption</u>
Federal, State or Local Government	12-24-40(2)
Federal Credit Union	12-24-40(2)
Government National Mortgage Association	12-24-40(2)
Farm Credit Bank	12-24-40(2)
Production Credit Association	12-24-40(2)
Bank for Cooperatives	12-24-40(2)
Federal Land Bank Association	12-24-40(2)
U.S. Veterans Administration	12-24-40(2)
Federal National Mortgage Association	12-24-40(3), 12 U.S.C. 1717, and 12 U.S.C. 1723a
Federal Home Loan Mortgage	12-24-40(3) & 12 U.S.C. 1452

Note: By statute or case law, Federal Credit Unions, the Government National Mortgage Association, Farm Credit Banks, Production Credit Associations, Banks for Cooperatives, and Federal Land Bank Associations are considered instrumentalities of the federal government.

The Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage (“Freddie Mac”) are not instrumentalities of the federal government, but have been granted exemption from most state and local taxes when the liability for the tax falls upon them. Since the liability for the fee transfers to the grantee in the case of a Master-in-Equity deed, the transfer by a Master-in-Equity deed to the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage (“Freddie Mac”) is exempt from the deed recording fee pursuant to federal law.

FORECLOSURE DEEDS:

29. Are deeds that transfer realty, subject to a mortgage, from the mortgagor to the mortgagee subject to the deed recording fee?

Deeds that transfer realty, subject to a mortgage, from the mortgagor to the mortgagee are exempt from the deed recording fee under Code Section 12-24-40(13) if the transfer is by a deed in lieu of foreclosure executed by the mortgagor.

Deeds that transfer realty from the mortgagor to the mortgagee for cancellation or forgiveness of the mortgage are subject to the deed recording fee and do not come within the exemption under Code Section 12-24-40(13) unless the books and records of the parties indicate that the transfer was made in lieu of foreclosure. If the Department determines after the deed is recorded that the transfer was not in lieu of foreclosure, the Department will assess the appropriate deed recording fee, penalty and interest.

30. Are deeds that transfer realty, subject to a mortgage, to the mortgagee pursuant to a foreclosure proceeding subject to the deed recording fee?

Deeds that transfer realty, subject to a mortgage, to the mortgagee pursuant to a foreclosure proceeding are exempt from the deed recording fee under Code Section 12-24-40(13).

31. Are deeds that transfer realty, subject to a mortgage, to the assignee of the mortgagee pursuant to foreclosure a proceeding subject to the deed recording fee?

Since the assignee was not the mortgagee of record at the time of the sale, the provisions of Code Section 12-24-40(13) are not applicable.

However, if the assignee is the federal government, or the deed is a Master-in-Equity deed and the assignee is the Federal National Mortgage Association or the Federal Home Loan Mortgage, the deed that transfers the realty, subject to a mortgage, to the assignee of the mortgagee pursuant to a foreclosure proceeding is not subject to the deed recording fee.

Note: This also applies if the assignee is a single member limited liability company (SMLLC). Specifically, the deed that transfers the realty, subject to a mortgage, to an assignee of the mortgagee pursuant to a foreclosure proceeding is not subject to the deed recording fee if: (a) the assignee is a single member limited liability company (SMLLC); (b) the single member of the SMLLC is the mortgagee of record at the time of the sale; and (c) the SMLLC is not regarded as an entity separate from its owner under Code Section 12-2-(B)(17).²⁰

CHAPTER 7 BANKRUPTCY DEEDS:

32. Are deeds that transfer realty under a Chapter 7 bankruptcy subject to the deed recording fee?

²⁰ A single member limited liability company (SMLLC) is not considered an entity separate from its owner under Code Section 12-2-25(B)(1) if the single member limited liability company (SMLLC) is not taxed for South Carolina income tax purposes as a corporation.

Deeds that transfer realty under a Chapter 7 bankruptcy to a person who is not a stockholder, partner, or owner of the business are subject to the deed recording fee if a consideration of more than \$100.00 is paid or will be paid and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds that transfer realty under a Chapter 7 bankruptcy to a person who is a stockholder, partner, or owner of the business are subject to the deed recording fee based on the fair market value of the realty unless the transfer is otherwise exempt under Code Section 12-24-40.

CHAPTER 11 BANKRUPTCY DEEDS:

33. Are deeds that transfer realty under a Chapter 11 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 11 bankruptcy are exempt from the deed recording fee under Code Section 12-24-40(3) and 11 U.S.C. Section 1146 if the transfer is under a plan confirmed under 11 U.S.C. Section 1129. If the transfer is not under a plan confirmed under 11 U.S.C. Section 1129, then the deed transferring the realty is subject to the deed recording fee if consideration of more than \$100.00 is paid for the transfer and the transfer is not otherwise exempt under Code Section 12-24-40.

CHAPTER 12 BANKRUPTCY DEEDS:

34. Are deeds that transfer realty under a Chapter 12 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 12 bankruptcy are exempt from the deed recording fee under Code Section 12-24-40(3) and 11 U.S.C. Section 1231 if the transfer is under a plan confirmed under 11 U.S.C. Section 1225. If the transfer is not under a plan confirmed under 11 U.S.C. Section 1225, then the deed transferring the realty is subject to the deed recording fee if consideration of more than \$100.00 is paid for the transfer and the transfer is not otherwise exempt under Code Section 12-24-40.

CHAPTER 13 BANKRUPTCY DEEDS:

35. Are deeds that transfer realty under a Chapter 13 bankruptcy subject to the deed recording fee?

Deeds that transfer realty under a Chapter 13 bankruptcy to a person who is not a stockholder, partner, or owner of the business are subject to the deed recording fee if a consideration of more than \$100.00 is paid or will be paid and the transfer is not otherwise exempt under Code Section 12-24-40.

Deeds that transfer realty under a Chapter 13 bankruptcy to a person who is a stockholder, partner, or owner of the business are subject to the deed recording fee based on the fair market value of the realty unless the transfer is otherwise exempt under Code Section 12-24-40.

STATE AND LOCAL GOVERNMENT DEEDS:

36. Are deeds that transfer realty to the State, or to a political subdivision of the State (e.g., counties, cities, school districts), subject to the deed recording fee?

Deeds that transfer realty to the State, or to a political subdivision of the State (e.g., counties, cities, school districts), are exempt from the deed recording fee under Code Section 12-24-40(2).

37. Are deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to non-governmental entity, the deed may be exempt if the grantee is otherwise exempted by law.

38. Are deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to another governmental entity subject to the deed recording fee?

Deeds that transfer realty from the State, or from a political subdivision of the State (e.g., counties, cities, school districts), to another governmental entity are exempt from the deed recording fee under Code Section 12-24-40(2).

FEDERAL GOVERNMENT DEEDS:

39. Are deeds that transfer realty to the federal government subject to the deed recording fee?

Deeds that transfer realty to the federal government are exempt from the deed recording fee under Code Section 12-24-40(2).

40. Are deeds that transfer realty from the federal government to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the federal government to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

FEDERAL CREDIT UNION DEEDS:

41. Are deeds that transfer realty to a federal credit union subject to the deed recording fee?

Deeds that transfer realty to a federal credit union are exempt from the deed recording fee under Code Section 12-24-40(2) since federal credit unions are considered instrumentalities of the federal government. See 1986 Op. Atty. Gen. No. 86-72, and a second South Carolina Attorney General Opinion dated March 26, 1991, which both concluded that federally chartered credit unions are instrumentalities of the federal government.

42. Are deeds that transfer realty from the federal credit union to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a federal credit union to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION DEEDS:

43. Are deeds that transfer realty to the Government National Mortgage Association subject to the deed recording fee?

Deeds that transfer realty to the Government National Mortgage Association are exempt from the deed recording fee under Code Section 12-24-40(2) since the Government National Mortgage Association is considered an instrumentality of the federal government pursuant to 12 U.S.C. 1717 and 12 U.S.C. 1723a.

44. Are deeds that transfer realty from the Government National Mortgage Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Government National Mortgage Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

FARM CREDIT BANK DEEDS:

45. Are deeds that transfer realty to a Farm Credit Bank subject to the deed recording fee?

Deeds that transfer realty to a Farm Credit Bank are exempt from the deed recording fee under Code Section 12-24-40(2) since a Farm Credit Bank is considered an instrumentality of the federal government pursuant to 12 U.S.C. 2011 and 12 U.S.C. 2023.

46. Are deeds that transfer realty from a Farm Credit Bank to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Farm Credit Bank to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

PRODUCTION CREDIT ASSOCIATION DEEDS:

47. Are deeds that transfer realty to a Production Credit Association subject to the deed recording fee?

Deeds that transfer realty to a Production Credit Association are exempt from the deed recording fee under Code Section 12-24-40(2) since a Production Credit Association is considered an instrumentality of the federal government pursuant to 12 U.S.C. 2071 and 12 U.S.C. 2077.

48. Are deeds that transfer realty from a Production Credit Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Production Credit Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

FEDERAL LAND BANK ASSOCIATION DEEDS:

49. Are deeds that transfer realty to a Federal Land Bank Association subject to the deed recording fee?

Deeds that transfer realty to a Federal Land Bank Association are exempt from the deed recording fee under Code Section 12-24-40(2) since a Federal Land Bank Association is considered an instrumentality of the federal government pursuant to 12 U.S.C. 2091 and 12 U.S.C. 2098.

50. Are deeds that transfer realty from a Federal Land Bank Association to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from a Federal Land Bank Association to a non-governmental entity are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: Since under Code Section 12-24-20(B) the liability for the deed recording fee has shifted to the grantee in the case of a deed from the federal government, the deed may be exempt if the grantee is otherwise exempted by law.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (“FANNIE MAE”) DEEDS:

51. Are deeds that transfer realty to the Federal National Mortgage Association (“FNMA” or “Fannie Mae”) subject to the deed recording fee?

Deeds that transfer realty to the Federal National Mortgage Association (“FNMA” or “Fannie Mae”) are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: If the deed is a Master-in-Equity deed, a deed from the federal government, a state or a state’s political subdivision, or the deed is from a qualified retirement plan exempt from income taxes under the Internal Revenue Code, then the deed (transferring the realty to FNMA or Freddie Mac) is not subject to the deed recording fee since the liability rests with the grantee under Code Section 12-24-20(B) and FNMA and Freddie Mac are exempt from the fee under Code Section 12-24-40(3), 12 U.S.C. 1717, 12 U.S.C. 1723a and 12 U.S.C. 1452.

52. Are deeds that transfer realty from the Federal National Mortgage Association (“FNMA” or “Fannie Mae”) to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Federal National Mortgage Association (“FNMA” or “Fannie Mae”) to a non-governmental entity are exempt from the deed recording fee under Code Section 12-24-40(3), 12 USCS 1717, and 12 U.S.C.A. 1723a.

Note: The Federal National Mortgage Association is not a federal instrumentality.

FEDERAL HOME LOAN MORTGAGE CORPORATION (“FREDDIE MAC”) DEEDS:

53. Are deeds that transfer realty to the Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”) subject to the deed recording fee?

Deeds that transfer realty to the Federal Home Loan Mortgage Corporation (“FHLMC” or “Freddie Mac”) are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

Note: If the deed is a Master-in-Equity deed, a deed from the federal government, a state or a state's political subdivision, or the deed is from a qualified retirement plan exempt from income taxes under the Internal Revenue Code, then the deed (transferring the realty to FNMA or Freddie Mac) is not subject to the deed recording fee since the liability rests with the grantee under Code Section 12-24-20(B) and FNMA and Freddie Mac are exempt from the fee under Code Section 12-24-40(3), 12 U.S.C. 1717, 12 U.S.C. 1723a and 12 U.S.C. 1452.

54. Are deeds that transfer realty from the Federal Home Loan Mortgage Corporation ("FHLMC" or "Freddie Mac") to a non-governmental entity subject to the deed recording fee?

Deeds that transfer realty from the Federal Home Loan Mortgage Corporation ("Freddie Mac") to a non-governmental entity are exempt from the deed recording fee under Code Section 12-24-40(3) and 12 U.S.C.A. 1452.

Note: The Federal Home Loan Mortgage Corporation ("Freddie Mac") is not a federal instrumentality.

TIMESHARE DEEDS:

55. Are deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan (not a "vacation time sharing lease plan") as defined in Chapter 32 of Title 27 subject to the deed recording fee?

Deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan as defined in Chapter 32 of Title 27 are subject to the deed recording fee if the consideration paid or to be paid is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

56. Are deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan (not a "vacation time sharing lease plan") as defined in Chapter 32 of Title 27 to the original seller, or to the company managing the timeshare development, in exchange for forgiving any unpaid fees subject to the deed recording fee?

Deeds that transfer a one-week interest in a timeshare unit under a vacation time sharing ownership plan as defined in Chapter 32 of Title 27 to the original seller, or to the company managing the timeshare development, in exchange for forgiving any unpaid fees are subject to the deed recording fee if the consideration paid or to be paid (the amount of the unpaid fees forgiven) is more than \$100.00 and the transfer is not otherwise exempt under Code Section 12-24-40.

MANUFACTURED HOMES:

57. Are deeds that transfer land and the manufactured home anchored to the land subject to the deed recording fee based on the full consideration paid or may the value of the home be deducted in calculating the deed recording fee?

Deeds that transfer land and the manufactured home anchored to the land are subject to the deed recording fee based on the full consideration paid. The manufactured home anchored to the land is realty and its value may not be deducted from the consideration paid in calculating the deed recording fee.

Note: "A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer." See Code Section 12-24-30(B).

TIMBER DEEDS:

58. Are "timber deeds" subject to the deed recording fee?

Deeds that constitute a contract for the sale of timber to be cut are exempt from the deed recording fee under Code Section 12-24-40(7).

Deeds transferring the timber and the underlying land are subject to the deed recording fee based on the full "value" as defined in Code Section 12-24-30, unless otherwise exempt under the statute.

MINERAL RIGHTS:

59. Is the recording of a deed that conveys mineral rights (oil, gas, sand, etc.) to another person subject to the deed recording fee?

A deed that conveys mineral rights (oil, gas, sand, etc.) to another person where the minerals are to be severed by the grantee (buyer) is a deed that conveys realty. The recording of this deed is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the mineral rights as determined by Code Section 12-24-30. (See SC Revenue Ruling #06-11 (Conveyance of Mineral Rights) (Deed Recording Fee)).

If the minerals are to be severed by the grantor (seller), the transaction is for the sale of goods and not subject to the deed recording fee.

EASEMENTS AND RIGHT-OF-WAYS:

60. Is the recording of a deed that conveys an easement or a right of way (including a conservation easement) to another person subject to the deed recording fee?

The recording of a deed that conveys an easement or a right of way (including a conservation easement) to another person is subject to the deed recording fee, unless otherwise exempt under the law, based on the value of the easement or right of way as determined by Code Section 12-24-30. (*See SC Revenue Ruling #06-10 (Easements and Right of Ways) (Deed Recording Fee)*).

Note: In addition to the discussion portion of this document, see Questions #1 through #4 above for a discussion of “value” as determined by Code Section 12-24-30.

DEEDS TO OBTAIN CONSTRUCTION LOANS:

To best address Questions #61 and #62 (below) concerning deeds to obtain construction loans, the following example will be used:

Mr. X owns realty with a fair market value of \$22,000.00 and wants to construct a home on that realty. Mr. X hires ABC Home Contractors to build a home on the realty for \$250,000.00.

In order to obtain the construction loan to build the home, the financial institution is requiring that title to the realty on which the home is to be constructed be in the name of ABC Home Contractors. Mr. X transfers the realty to ABC Home Contractors under an agreement that ABC Home Contractors will construct the home (per specifications agreed upon by both parties) and then transfer the realty back to Mr. X upon payment of the \$250,000.00. See SC Revenue Ruling #05-8.

Note: For purposes of this example, neither transfer involves a lien or encumbrance that existed on the realty before the transfer and remained on the realty after the transfer. In addition, neither transfer in this example involves (1) a transaction between a corporation, a partnership, or other entity and its stockholder, partner, or owner, or (2) a transaction involving a transfer of realty to a trust or as a transfer of realty as a distribution to a trust beneficiary.

61. Is the deed that transfers realty from Mr. X to ABC Home Contractors as discussed in the facts, so that ABC Home Contractors may obtain a construction loan to build a home for Mr. X, subject to the deed recording fee?

The deed that transfers realty from Mr. X to ABC Home Contractors as discussed in the facts, so that ABC Home Contractors may obtain a construction loan to build a home for Mr. X, is subject to the deed recording fee based on \$22,000.00 - the fair market value of the realty.

Note: If the fair market value of the realty for property tax purposes is less than \$22,000.00, Code Section 12-24-30(C), allows the taxpayer to use that figure (*fair market value*) in computing the deed recording fee due.

62. Is the deed that transfers the same realty, as discussed in the facts, from ABC Home Contractors back to Mr. X upon completion of the building subject to the deed recording fee?

The deed that transfers the same realty, as discussed in the facts, from ABC Home Contractors back to Mr. X upon completion of the home is subject to the deed recording fee based on \$250,000.00 - the money paid or to be paid pursuant to the contract for constructing the home.

63. Are the deeds that transfer realty as part of an income tax deferred exchange under Internal Revenue Code Section 1031 subject to the deed recording fee?

The exchange of realty pursuant to Section 1031 of the Internal Revenue Code constitutes a transfer of realty for a consideration subject to the fee unless otherwise exempted under Code Section 12-24-40.

The Department has issued a separate advisory opinion, SC Revenue Ruling #99-2, concerning the deed recording fee and the transfer of realty as part of an income tax deferred exchange under Internal Revenue Code Section 1031. For information concerning the taxability of the various transactions in an income tax deferred exchange under Internal Revenue Code Section 1031, consult SC Revenue Ruling #99-2, which is available on the Department's website.

The remaining questions and answers are not included in Regulation 117-1350.2; however, they have included to provide further clarification on these common real estate transactions and issues.

CHARTER SCHOOLS AUTHORIZED UNDER CHAPTER 40 OF TITLE 59 OF THE SOUTH CAROLINA CODE OF LAWS:

64. *Are deeds that transfer realty to a charter school authorized under Chapter 40 of Title 59 of the South Carolina Code of Laws subject to the deed recording fee?*

No. Deeds that transfer realty to a charter school authorized under Chapter 40 of Title 59 of the South Carolina Code of Laws are exempt from the deed recording fee under Code Section 59-40-140(K).

65. *Are deeds that transfer realty from a charter school authorized under Chapter 40 of Title 59 of the South Carolina Code of Laws to an individual or business subject to the deed recording fee?*

No. Deeds that transfer realty from a charter school authorized under Chapter 40 of Title 59 of the South Carolina Code of Laws to an individual or business are exempt from the deed recording fee under Code Section 59-40-140(K).

AGENT TO PRINCIPAL TRANSFERS:

66. *Are deeds that transfer realty from an agent to the agent's principal subject to the deed recording fee?*

Deeds that transfer realty from an agent to the agent's principal are not subject to the deed recording fee if the realty was purchased with funds of the principal and a notarized document is filed with the deed establishing the facts that the agent and principal relationship existed at the time of the original purchase for the purpose of purchasing the realty.

INTERNAL REVENUE CODE SECTION 338(h)(10) ELECTION:

67. *Is the deed recording fee due when a purchasing corporation making a qualified stock purchase (i.e., the purchase of at least 80% of the total voting power and value of the stock of a corporation during a 12 month acquisition period) of a target corporation and purchasing and target corporations making a joint election under Internal Revenue Code Section 338 ("Certain Stock Purchases Treated as Asset Acquisitions")?*

No. For deed recording fee purposes, a "transfer" of realty to another person has not taken place under Code Section 12-24-10. Accordingly, there is no South Carolina deed recording fee consequence from an Internal Revenue Code Section 338(h)(10) election. See SC Revenue Ruling #09-4.

COMMUNITY LAND TRUSTS:

68. *Is the sale of land to a Community Land Trust that will be leased by the Community Land Trust in providing affordable, low-income housing to a homebuyer under the provisions of Chapter 23 of Title 31 of the S.C. Code of Laws subject to the deed recording fee?*

No. Section 31-23-40(G) states that “[p]roperties purchased, sold, or repurchased and resold by a [Community Land Trust] ... must be assessed the real estate deed recording fee only once per transfer at the time of the resale to a homebuyer.”

Since the land will be used by the Community Land Trust to provide affordable, low-income housing, it is not subject to the deed recording fee when it is originally purchased by the Community Land Trust.

69. *If a Community Land Trust builds a home to provide affordable, low-income housing and sells the home, and leases the underlying land, as affordable, low-income housing to a homebuyer under the provisions of Chapter 23 of Title 31 of the S.C. Code of Laws, is the sale of the home subject to the deed recording fee.*

Yes. Section 31-23-40(G) states that property sold by a Community Land Trust is subject to the deed recording fee but only “at the time of the resale to a homebuyer.”

70. *Is the sale of land to a Community Land Trust which is created under the provisions of Chapter 23 of Title 31 of the S.C. Code of Laws subject to the deed recording fee if the land that is sold to the Community Land Trust will subsequently be leased by the Community Land Trust as part of a neighborhood development of a nonresidential nature?*

Yes. Code Section 31-23-40(A) states that “[a] [Community Land Trust] must have its primary purpose to hold legal and equitable title to land and the leasing of land for the purpose of preserving the long-term affordability of housing created for predominately low income and moderate income households.” Code Section 31-23-40(G) then states that “[p]roperties purchased, sold, or repurchased and resold by a [Community Land Trust] ... must be assessed the real estate deed recording fee only once per transfer at the time of the resale to a homebuyer.”

If a Community Land Trust purchases land for the purpose of leasing it as part of a neighborhood development of a nonresidential nature, then the primary purpose of the Community Land Trust is not to lease the land for the purpose of preserving and providing long-term affordability of housing. Therefore, the limitation on the deed recording fee in Code Section 31-23-40(G) is inapplicable and the deed recording fee is due on all real estate transfers involving the neighborhood development unless the transfer is otherwise exempt.

71. *If a Community Land Trust builds a shopping complex as part of a neighborhood development under the provisions of Chapter 23 of Title 31 of the S.C. Code of Laws, is the sale of the shopping complex subject to the deed recording fee?*

Yes. Code Section 31-23-40(G) states that property sold by a Community Land Trust is subject to the deed recording fee but only “at the time of the resale to a homebuyer.”

Since the shopping complex is nonresidential and will not be sold to a homebuyer, the limitation on the deed recording fee in Code Section 31-23-40(G) is inapplicable and the deed recording fee is due on all real estate transfers relating to the shopping complex unless the transfer is otherwise exempt.

WAIVING THE AFFIDAVIT:

72. *Can the affidavit required under Code Section 12-24-70 be waived?*

*Code Section 12-24-70 states that the clerk of court or the register of deeds **shall require** an affidavit showing the value of the realty to be filed along with a deed. However, Code Section 12-24-70 further provides that the clerk of court or register of deeds, at his discretion, may waive the affidavit requirement. The statute does not provide any guidance on when the clerk of court or the register of deeds may use this discretion and waive the affidavit required under 12-24-70. However, as officers of the Court, neither the clerk of court nor the register of deeds may act arbitrarily or abuse its discretion in waiving the required affidavit or use his discretion in excess of his lawfully delegated authority in waiving the required affidavit.*

DEEDS RECORDED IN THE WRONG COUNTY:

73. *If a deed is recorded in the wrong county (e.g., a deed for realty in Lexington County is incorrectly recorded in Richland County), how should this matter be corrected for purposes of the deed recording fee?*

Since the deed recording fee is actually a single fee composed of a state portion and a county portion, the entire fee must be paid when any deed is recorded with the county clerk of court or register of deeds.

Therefore, if a deed is recorded in the wrong county (e.g., a deed for realty in Lexington County is incorrectly recorded in Richland County), then the deed should be recorded in the correct county. The entire fee of “one dollar eighty-five cents for each five hundred dollars,

or fractional part of five hundred dollars, of the realty's value as determined by Section 12-24-30" should be paid in the correct county.

After recording the deed in the correct county, the person legally liable for the deed recording fee²¹ should file a claim for refund of the fee paid in the wrong county in accordance with the refund procedures for the deed recording fee established on pages 42 through 44 of this manual. In addition to the information and documentation required in the Department's refund procedures, the person filing the claim for refund should also provide the Department documentation that the deed has been recorded in the correct county. The Department will refund the state portion of the fee and order the county to refund the county portion of the fee.

LIABILITY FOR THE DEED RECORDING FEE:

74. Who is liable for the deed recording fee?

The deed recording fee is generally the liability of the grantor or the joint and several liability of the grantors. The grantee, however, is secondarily liable for the fee.

The grantee (or grantees), and not the grantor, is liable for the deed recording fee under the following circumstances:

- (a) master-in-equity deed;*
- (b) deed from the federal government;*
- (c) deed from a state or any one of a state's political subdivisions; and*
- (d) deed from a qualified retirement plan exempt from income taxes under the Internal Revenue Code.*

²¹ See Question #5 of this revenue ruling.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **December 20, 2023**



Procedural and Other Issues

Procedural and Other Issues

REMITTANCE OF FEE IN THE COUNTY IN WHICH THE REALTY IS LOCATED:

The fee must be remitted to the clerk of court or the register of deeds in the county in which the realty is located and recorded.²²

REMITTANCE OF FEE FOR REALTY LOCATED IN MORE THAN ONE COUNTY:

If the realty is located in more than one county, the person having the deed recorded in a county must state by affidavit what portion of the value of the realty is in that county and payment of the fee must be made based on the proportionate value of the realty located in that county.²³

For example, ABC Corporation sells realty, approximately 10 acres, to XYZ Corporation for \$1,000,000. The realty is located in two counties, with 3 acres in County A and 7 acres in County B. Because of the location of the 3 acres in County A (e.g., located at a major intersection, on the waterfront, etc.), the value of the 3 acres in County A is \$700,000 while the value of the 7 acres in County B is \$300,000.

Based on these values, 70% of the value is assigned to County A and both the state and county portions of the deed recording fee are paid in County A based on \$700,000 consideration paid (Total Fee Paid in County A: \$2,590 (\$1,820 State Fee and \$770 County A Fee)). The remaining 30% of the value is assigned to County B and both the state and county portions of the deed recording fee are paid in County B based on \$300,000 consideration paid (Total Fee Paid in County B: \$1,110 (\$780 State Fee and \$330 County B Fee)).

NOTATION ON THE INSTRUMENT:

Prior to recording a deed subject to the fee, the county must collect the fee and place a notation on the deed containing the following (1) the date the deed was filed; (2) the fee collected; and,

²² See SC Code Ann. Regs. 117-1350.3.

²³ See SC Code Ann. Regs. 117-1350.4.

(3) any other information required by the county. If the deed qualifies for an exemption, the word "EXEMPT" should be placed in the notation.²⁴

AFFIDAVIT OF VALUE:

An affidavit of value must be filed along with a deed pursuant to Code Section 12-24-70. For deeds exempt under the law, the value need not be stated in the affidavit, but it must provide the basis for the exemption. The affidavit must be signed by a responsible person connected with the transaction and must state that connection. Secretaries, paralegals, runners, other administrative personnel do not qualify as a "responsible person connected with the transaction" and, therefore, may not sign the affidavit.

The clerk of court or register of deeds must require these affidavits to be filed with a deed.

The clerk of court or register of deeds may waive, at his/her discretion, the affidavit requirement. However, as officers of the Court, neither the clerk of court nor the register of deeds may act arbitrarily or abuse its discretion in waiving the required affidavit or use his discretion in excess of his lawfully delegated authority in waiving the required affidavit.

"[A]n affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title."

A person required to furnish the affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.²⁵

The department has included model affidavits in this manual. The department does not require the use of these affidavits, but provides them to assist recording officials and taxpayers.

COMPONENTS OF THE FEE:

The fee is composed of two fees as follows:

- (1) a State fee equal to one dollar and thirty cents for each five hundred dollars, or fractional part thereof, of the realty's value, and

²⁴ See SC Code Ann. Regs. 117-1350.5.

²⁵ See SC Code Ann. Regs. 117-1350.6.

- (2) a county fee equal to fifty-five cents for each five hundred dollars, or fractional part thereof, of the realty's value.²⁶

For information on the distribution of the State portion of the deed recording fee, see Code Section 12-24-90 and Code Section 12-24-95.

MONTHLY REPORTS:

The fees are due and payable to the Department of Revenue in monthly installments with a report filed by the clerk or Register of Deeds on or before the twentieth day of the month following the month in which the fees were collected. The Department of Revenue may, at its discretion, allow a county to file its report on a basis other than monthly.

The county must remit with each report only that portion of the fee that represents the State portion. The county retains its portion of the fee.²⁷

The report filed by the clerk or Register of Deeds with the Department of Revenue is Form L-2125, which can be found on the Department's website (www.dor.sc.gov).

REFUND PROCEDURES:

If a taxpayer believes he has overpaid a deed recording fee, whether it is because the transfer was exempt from the deed recording fee, the taxpayer filed a deed in the wrong county, the fee was inadvertently paid more than once, or because the taxpayer believes the value of the consideration paid in money's worth is less than what was originally reported, a taxpayer may seek a refund of the deed recording fee from the Department.

The deed recording fee requires that each deed have a notation placed upon it by the Clerk of Court or the Register of Deeds ("county recording official"). This notation must include the filing date, the fee collected, and any other information the county may require. The notation must state "Exempt" if the transaction falls within one of the exemptions provided under Code Section 12-24-40.

²⁶ See SC Code Ann. § 12-24-10; SC Code Ann. Regs. 117-1350.

²⁷ See SC Code Ann. § 12-24-100.

If a taxpayer seeks a refund of any deed recording fee, the following procedure must be followed:

1. The taxpayer must obtain a “certified” or “true” copy of the deed and the affidavit (if the requirement for the affidavit was not waived by the clerk or register) from the county recording official.

The county recording official must note on the copy of the deed and affidavit that each is a “certified” or “true” copy and also sign a letter or form verifying that each copy is a “certified” or “true” copy and stating the amount of the State and county deed recording fee that was paid. If the affidavit was not required or waived at the time of filing, the letter or form should state the reasoning why the affidavit was not required or why the affidavit was waived.

If the taxpayer is seeking a refund based on filing a deed in the incorrect county, this means the taxpayer must obtain a “certified” or “true” copy of the deed and the affidavit filed in the incorrect county.

If the taxpayer is seeking a refund because the fee was inadvertently paid more than once, or because the taxpayer believes the consideration paid in money’s worth is less than what was originally reported, this means the taxpayer must obtain a “certified” or “true” copy of the deed and the affidavit that was filed the first time.

2. The taxpayer must also obtain a “certified” or “true” copy of the duplicate deed and the duplicate affidavit (if the requirement for the affidavit was not waived by the clerk or register).

The county recording official must note on the copy of the deed and affidavit that each is a “certified” or “true” copy and also sign a letter or form verifying that each copy is a “certified” or “true” copy and stating the amount of the State and county deed recording fee that was paid. If the affidavit was not required or waived at the time of filing, the letter or form should state the reasoning why the affidavit was not required or waived.

If the taxpayer is seeking a refund based on filing a deed in the incorrect county, this means the taxpayer must obtain a “certified” or “true” copy of the deed and the affidavit filed in the correct county.

If the taxpayer is seeking a refund because the fee was inadvertently paid more than once, this means the taxpayer must obtain a “certified” or “true” copy of the deed and the affidavit that was filed the second time.

If the taxpayer is seeking a refund because the taxpayer believes the consideration aid in money’s worth is less than what was originally reported, this means the taxpayer must

obtain a “certified” or “true” copy of the deed and the affidavit filed after the original deed and affidavit, indicating the change in value of the consideration paid in money’s worth.

3. The taxpayer should then forward the “certified” or “true” copies of the deeds, the “certified” or “true” copies of the affidavits (if required) and the verification letters or forms to the Department of Revenue (“Department”). The taxpayer must also include a cover letter requesting the refund and containing the following information required by S.C. Code Ann. § 12-60-470 (2014):
 - a. The name, address, and telephone number of the taxpayer;
 - b. The appropriate taxpayer identification number or numbers (SSN, FEIN, ITIN, SID, etc.);
 - c. The tax period or date for which the tax is paid;
 - d. The nature and kind of tax paid;
 - e. The amount which the taxpayer claims was erroneously paid;
 - f. A statement of facts supporting the taxpayer’s position;
 - g. A statement outlining the reasons for the claim, including law and other authority upon which the taxpayer relies; and
 - h. Other relevant information that the department may reasonably require.

All refund requests for deed recording fees should be mailed to:

SC Department of Revenue
Miscellaneous Tax Section
P.O. Box 125
Columbia, South Carolina 29214-0870

3. The Department, upon review of the refund request, may request any additional information from the taxpayer or the county recording official to assist it in determining whether or not a refund is due.

If a refund is due, the Department will refund the State portion to the taxpayer and issue an order for the county recording official to refund the taxpayer the county portion of the fee. The county recording official should not issue a refund for the county portion of the fee unless they have received the refund order issued by the Department.

4. If the Department determines a refund is not due, the Department will advise the taxpayer. The taxpayer may appeal this denial of the refund under the provisions of Code Sections 12-60-470 and 12-24-150.

It is recommended that copies of this refund procedure be made available to taxpayers seeking a refund and/or posted at the office of the county recording official.

This process for making a request for a refund of the deed recording fee, which is incorporated into Revenue Ruling #23-____, replaces the process set forth in Revenue Ruling #15-5.

PUBLIC DRAFT

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Summary of Governmental Transactions

SUMMARY OF DEED RECORDING FEE FOR TRANSACTIONS INVOLVING GOVERNMENTAL ENTITIES AND NON-GOVERNMENT ENTITIES CREATED BY THE FEDERAL GOVERNMENT:

<u>DEED FROM (GRANTOR)</u>	<u>DEED TO (GRANTEE)</u>	<u>TAX STATUS</u>
Master-in-Equity	Individual/Business	Tax Due by Indiv./Business *
Individual/Business	State Government	Exempt
State Government	Individual/Business	Tax Due by Indiv./Business *
Individual/Business	Federal Government	Exempt
Federal Government	Individual/Business	Tax Due by Indiv./Business *
Individual/Business	GNMA Farm Credit Bank Prod. Credit Assoc. Bank for Cooperatives Federal Land Bank Assoc.	Exempt
GNMA Farm Credit Bank Prod. Credit Assoc. Bank for Cooperatives Federal Land Bank Assoc.	Individual/Business	Tax Due by Indiv./Business *
Individual/Business	FNMA; Freddie Mac**	Tax Due by Individual/Business
FNMA; Freddie Mac**	Individual/Business	Exempt
Master-in-Equity	FNMA; Freddie Mac**	Exempt*

* Pursuant to Code Section 12-24-20(B), the liability for the fee falls upon the grantee in the case of master-in-equity deeds and deeds **from** the federal or state government.

** The Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (Freddie Mac) were created by Congress but are not governmental entities or instrumentalities.

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **December 20, 2023**



Sample Affidavits

SAMPLE AFFIDAVITS

When recording a deed, Code Section 12-24-70 requires an affidavit to be filed with a deed and states:

(A)(1) The clerk of court or register of deeds shall require an affidavit showing the value of the realty to be filed with a deed. The affidavit required by this section must be signed by a responsible person connected with the transaction, and the affidavit must state that connection. The clerk of court or register of deeds, at his discretion, may waive the affidavit requirement.

(2) For deeds exempt from the provisions of this chapter, the value is not required to be stated on the affidavit, but the affidavit must state the reason the deed is exempt from the fee.

(B) The clerk of court or register of deeds shall file these affidavits in his office.

(C) A person required to furnish the affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

(D) An affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title.

The Department has two sample affidavits that it provides as a convenience for taxpayers and local recording officials. (Note: Local officials may require an affidavit with additional information to meet local needs.)

The first affidavit may be used for either taxable transfers or exempt transfers. The second affidavit may be used only for exempt transfers.

In addition, from time to time local recording officials receive affidavits that reference an “arm’s length transaction.” These affidavits are based on a sample affidavit developed by the Department in 1996 for a prior version of the deed recording fee law and are no longer valid. Any affidavit that references an “arm’s length transaction” should no longer be used, or accepted, when a deed is filed.

Note: “An instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of a decedent's estate pursuant to Section 62-3-907 as evidence of the distributee's title to the property is not a deed subject to [the deed recording fee.]” Code Section 12-24-10(B).

In addition, “[a]n affidavit is not required for an instrument or deed of distribution assigning, transferring, or releasing real property to the distributee of an estate pursuant to Section 62-3-907 as evidence of the distributee's title.” Code Section 12-24-70(D).

The exemption is not listed on the sample affidavits. However, if a person wishes to use and file an affidavit stating that the transaction is exempt under Code Section 12-24-10(B), he/she may complete the affidavit and reference this exemption and code section.

STATE OF SOUTH CAROLINA)Page 1 of 2
 COUNTY OF _____)**AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2 The property being transferred is located at _____, bearing
 County Tax Map Number _____, was transferred by _____
 to _____ on _____.

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is:
 _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
- (b) Place the amount listed in item 5 above here: _____
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is:
 _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____

9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 Responsible Person Connected with the Transaction

 Print or Type Name Here

SWORN to and subscribed before me this

_____ day of _____ 20 _____

Notary Public for _____

My Commission Expires: _____

Notary (L.S.): _____

Notary (printed name): _____

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration or transfers from a trust established for the benefit of a religious organization to the religious organization, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;

- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceeding;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.

2. The property being transferred is located at _____,
bearing _____ County Tax Map Number _____
was transferred by _____
to _____ on
_____.

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ or No ____

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

_____.

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

Print or Type Name Here

SWORN to and subscribed before me this

_____ day of _____ 20 ____

Notary Public for _____

My Commission Expires: _____

Notary (L.S.): _____

Notary (printed name): _____

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration or transfers from a trust established for the benefit of a religious organization to the religious organization, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

THE FOLLOWING EXAMPLE TRANSACTIONS WILL BE USED TO
DEMONSTRATE HOW TO BEST COMPLETE THE DEED
RECORDING FEE CALCULATION PORTION OF THE SAMPLE
AFFIDAVITS

Example A: Realty transferred from John Doe to Jerry Public for \$1,000 and the assumption of a mortgage with a balance of \$81,000.

Value for Deed Recording Fee Purposes: \$1,000. Since the mortgage existed on the realty before the transfer and remained on the realty after the transfer, the \$81,000 is deducted from the total consideration of \$82,000.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (See Information section of affidavit): _____
 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 82,000.00 .
- (b) The fee is computed on the fair market value of the realty which is _____.
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes X or No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- | | |
|--|-------------|
| (a) Place the amount listed in item 4 above here: | \$82,000.00 |
| (b) Place the amount listed in item 5 above here: | \$81,000.00 |
| (If no amount is listed, place zero here.) | |
| (c) Subtract Line 6(b) from Line 6(a) and place result here: | \$ 1,000.00 |

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 3.70 ($\$1,000/\$500 = 2$; $\$1.85 \times 2 = \3.70).

Example B: Realty transferred from John Doe to Jerry Public for \$82,000. The grantee paid \$1,000 down and \$81,000 at closing by obtaining a mortgage at a local financial institution.

Value for Deed Recording Fee Purposes: \$82,000. Since the mortgage did not exist on the realty before the transfer, the \$81,000 cannot be deducted from the total consideration of \$82,000.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (See Information section of affidavit):

 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 82,000.00 .
- (b) The fee is computed on the fair market value of the realty which is _____.
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$82,000.00
- (b) Place the amount listed in item 5 above here: 0.00
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$82,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 303.40 (\$82,000/\$500 = 164; \$1.85 x 164 = \$303.40).

Example C: Realty transferred from John Doe to XYZ Bank in lieu of foreclosure. The balance due on the debt, plus accumulated interest, is \$121,000. This is not a deed in lieu of foreclosure.

Value for Deed Recording Fee Purposes: \$121,000. By statute, consideration includes the forgiveness or cancellation of a debt. However, the value used may be less than \$121,000 if the fair market value of the realty is less than \$121,000 and the taxpayer elects to use the fair market value of the realty being transferred in determining fair market value of the consideration. In addition, the taxpayer may elect to use the fair market value for property tax purposes in determining fair market value.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (See Information section of affidavit):

 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 121,000.00 .
- (b) The fee is computed on the fair market value of the realty which is _____.
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- | | |
|--|---------------------------------|
| (a) Place the amount listed in item 4 above here: | <u> \$121,000.00 </u> |
| (b) Place the amount listed in item 5 above here: | <u> 0.00 </u> |
| (If no amount is listed, place zero here.) | |
| (c) Subtract Line 6(b) from Line 6(a) and place result here: | <u> \$121,000.00 </u> |

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 447.70 (\$121,000/\$500 = 242; \$1.85 x 242 = \$447.70).

Example D: Realty transferred from XYZ Corporation to one of its stockholders - John Doe. The fair market value of the realty is \$90,000. No lien or encumbrance existed on the realty prior to the transfer.

Value for Deed Recording Fee Purposes: \$90,000. By statute, the fair market value of the realty must be used in calculating the fee due in a transaction between a corporation and one of its stockholders. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the law.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) X subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (b) X The fee is computed on the fair market value of the realty which is \$90,000.00 .
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- | | |
|--|-------------|
| (a) Place the amount listed in item 4 above here: | \$90,000.00 |
| (b) Place the amount listed in item 5 above here: | 0.00 |
| (If no amount is listed, place zero here.) | |
| (c) Subtract Line 6(b) from Line 6(a) and place result here: | \$90,000.00 |

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 333.00 (\$90,000/\$500 = 180; \$185 x 180 = \$333.00).

Example E: Realty transferred from John Smith to his sister for \$75,000. No lien or encumbrance existed on the realty prior to the transfer.

Value for Deed Recording Fee Purposes: \$75,000. A consideration of \$75,000 was paid. The statute does not provide an exemption for transfers for a consideration between family members.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (See Information section of affidavit):

 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 75,000.00 .
- (b) The fee is computed on the fair market value of the realty which is _____.
- (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- | | |
|--|-------------------------|
| (a) Place the amount listed in item 4 above here: | <u> \$75,000.00 </u> |
| (b) Place the amount listed in item 5 above here: | <u> 0.00 </u> |
| (If no amount is listed, place zero here.) | |
| (c) Subtract Line 6(b) from Line 6(a) and place result here: | <u> \$75,000.00 </u> |

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 277.50 (\$75,000/\$500 = 150; \$1.85 x 150 = \$277.50) .

Example F: Realty transferred from John Smith to his sister for no consideration. No lien or encumbrance existed on the realty prior to the transfer.

Value for Deed Recording Fee Purposes: Exempt. Code Section 12-24-40(1) exempts deeds transferring realty in which the value (in this case - consideration) of the realty is equal to or less than \$100.

Calculation on Sample Affidavit:

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) X exempt from the deed recording fee because (See Information section of affidavit):
No consideration was paid or will be paid – Exemption #1.
 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
- (b) Place the amount listed in item 5 above here: _____
 (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____.

Example G: Realty transferred from John Smith to a friend for no consideration. No lien or encumbrance existed on the realty prior to the transfer.

Value for Deed Recording Fee Purposes: Exempt. Code Section 12-24-40(1) exempts deeds transferring realty in which the value (in this case - consideration) of the realty is equal to or less than \$100.

Statement of Exemption on Sample Affidavit:

3. The deed is exempt from the deed recording fee because (See Information section of affidavit): No consideration was paid or will be paid – Exemption #1 (Code Section 12-24-40(1)).

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____