



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #17-5

SUBJECT: Deed Recording Fee

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Ruling #15-3 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-24-10 (2014)
S. C. Code Ann. Section 12-24-20 (2014)
S. C. Code Ann. Section 12-24-30 (2014; Supp. 2016)
S. C. Code Ann. Section 12-24-40 (2014)
S. C. Code Ann. Section 12-24-50 (2014)
S. C. Code Ann. Section 12-24-70 (2014)
S. C. Code Ann. Section 12-2-25(B) (2014)
S. C. Code Ann. Section 62-3-907 (Supp. 2016)
S. C. Code Ann. Section 59-40-140(K) (Supp. 2016)
S. C. Code Ann. Section 31-23-40(G) (Supp. 2016)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

INTRODUCTION:

South Carolina imposes a deed recording fee pursuant to Chapter 24 of Title 12. This fee is composed of two fees – a state fee of one dollar thirty cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value and a county fee of fifty-five cents for each five hundred dollars, or fractional part of five hundred dollars, of the realty's value. The fee is collected by the office of the county clerk of court or register of deeds, which remits the state portion of the fee to the Department of Revenue on a monthly basis.

The purpose of this advisory opinion is to provide a comprehensive discussion of the application of the deed recording fee to a wide variety of real estate transactions. This advisory opinion will “summarize” longstanding Department opinion concerning the taxability of these transactions.

LAW and DISCUSSION:

Code Section 12-24-10 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.

(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.

Code Section 12-24-20 establishes the liability for 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.

Code Section 12-24-30 defines the term “value” as used in the imposition and reads:

(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.

With respect to the above deduction from "value" in Code Section 12-24-30(B), Code Section 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.

Code Section 12-24-40 provides several exemptions from the fee and reads:

Exempted from the fee imposed by this chapter 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)¹;

¹A review of Section 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. Also, the recognition of same-sex marriages in South Carolina for tax purposes exempts from the deed recording fee deeds that transfer realty to a same-sex spouse or to a former same-sex spouse if the transfer to a former same-sex spouse is pursuant to the terms of a divorce decree or settlement (Code Section 12-24-40(4)). See SC Revenue Ruling #14-9.

- (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, 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 of 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) 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; and,

- (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 executed 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.
- (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;

Based on the above, 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. When the consideration paid for realty is money, then the deed recording fee is based on the money paid.

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,
- (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.

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.

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.

Finally, Code Section 12-24-70 requires an affidavit to be filed (with some exceptions) with the clerk of court or the register of deeds, and reads:

(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.

As such, an affidavit showing the “value” of the realty must be filed with the deed. However, the requirement to file the affidavit may be waived by the clerk of court or register of deeds. In addition, an affidavit is not required for deeds of distribution transferring realty to a distributee.

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QUESTIONS AND ANSWERS:

The following questions and answers are common transactions or transactions representing questions the Department has received from taxpayers, attorneys and recording officials.

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.

With respect to the above deduction from "value" in Code Section 12-24-30(B), Code Section 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.

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.

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.”² 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.

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.”³ 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.

² 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.”

³ 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.”

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
<p>Realty transferred from John Doe to Jerry Public for \$1,000 and the assumption of a mortgage with a balance of \$81,000.</p>	<p>\$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.</p>
<p>Realty transferred from John Doe to Jerry Public for \$82,000 The grantor paid \$1,000 down and \$81,000 at closing by obtaining a mortgage at a local financial institution.</p>	<p>\$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.</p>
<p>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.</p>	<p>\$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.</p>
<p>Realty transferred from John Doe to Jerry Public for the cancellation of a debt, not associated with the realty, of \$50,000.</p>	<p>\$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.</p>
<p>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.</p>	<p>\$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.</p>

LIABILITY FOR THE DEED RECORDING FEE

5. 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.

RESPONSIBLE PERSON SIGNING THE AFFIDAVIT:

6. 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:

7. 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:

8. 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.

DEEDS RECORDED IN THE WRONG COUNTY

9. 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 fee⁴ should then file a claim for refund for the fee paid in the wrong county in accordance with the refund procedures for the deed recording fee established in SC Revenue Procedure #15-1. In addition to the information and documentation required in SC Revenue Procedure #15-1, 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.

REFUNDS:

10. 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 SC Revenue Procedure #15-1.

GIFTS FROM ONE INDIVIDUAL TO ANOTHER INDIVIDUAL:

11. 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:

12. 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.

Note: The recognition of same-sex marriages in South Carolina for tax purposes exempts from the deed recording fee deeds that transfer realty to a same-sex spouse (Code Section 12-24-40(4)). See SC Revenue Ruling #14-9.

⁴ See Question #5 of this revenue ruling.

13. 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.

14. 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.

Note: The recognition of same-sex marriages in South Carolina for tax purposes exempts from the deed recording fee deeds that transfer realty to a former same-sex spouse if the transfer is pursuant to the terms of a divorce decree or settlement (Code Section 12-24-40(4)). See SC Revenue Ruling #14-9.

CHARITABLE DEEDS:

15. 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 realty⁵, 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.)⁶, 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)),
- (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

⁵ 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.

⁶ 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.

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

16. 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 from 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:

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

Deed that transfer realty from an estate to a beneficiary are not subject to the deed recording fee since Code Section 12-24-10(B) states that 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].”

Note: “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.

18. 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:

19. 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)),

- (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.

20. 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. With the recognition of same-sex marriages for South Carolina tax purposes (SC Revenue Ruling #14-9), the term “spouse” as used in the above definition includes a same-sex spouse.

DEEDS TO AND FROM PARTNERSHIPS:

21. 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.

22. 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. With the recognition of same-sex marriages for South Carolina tax purposes (SC Revenue Ruling #14-9), the term “spouse” as used in the above definition includes a same-sex spouse.

23. 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.

24. 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:

25. 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.

Note: 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:

26. 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.
27. 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.

28. 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 fee.

29. 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:

30. 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:

31. 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.

32. 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).

33. 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, deeds that transfer realty, subject to a mortgage, to the assignee of the mortgagee pursuant to foreclosure a proceeding are not subject to the deed recording fee if:

- (a) the assignee is the federal government:
- (b) the deed is a Master-in-Equity deed and the assignee is the Federal National Mortgage Association or the Federal Home Loan Mortgage: or,
- (c) the assignee is a single member limited liability company (SMLLC), the single member of the SMLLC is the mortgagee of record at the time of the sale, and the SMLLC is not regarded as an entity separate from its owner under Code Section 12-2-25(B)(1)⁷.

CHAPTER 7 BANKRUPTCY DEEDS:

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

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.

⁷ 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.

CHAPTER 11 BANKRUPTCY DEEDS:

35. 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:

36. 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:

37. 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:

38. 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).

39. 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.

40. 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:

41. 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).

42. 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:

43. 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.

44. 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:

45. 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.

46. 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:

47. 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.

48. 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:

49. 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.

50. 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:

51. 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.

52. 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:

53. 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.

54. 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:

55. 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.

56. 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:

57. 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.

58. 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.

INTERNAL REVENUE CODE SECTION 1031 TAX DEFERRED EXCHANGE DEEDS:

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

Generally, transactions under Internal Revenue Code Section 1031 involve the exchange of realty and exchanges of realty are subject to the deed recording fee. However, such transactions can be complex and can also involve an intermediary who may act as an agent for one of the parties.

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. (See SC Revenue Ruling #99-2.)

MANUFACTURED HOMES:

60. 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:

61. 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:

62. 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.

EASEMENTS AND RIGHT-OF-WAYS (INCLUDING CONSERVATION EASEMENTS):

63. 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.

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 #64 and #65 (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.

64. 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.

65. 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.

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

66. 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?

Deeds that transfer realty to a charter school authorized under Chapter 40 of Title 59 of the South Carolina Code of Laws are not subject to the deed recording fee. These deeds are exempt from the deed recording fee under Code Section 59-40-140(K).

67. 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?

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 not subject to the deed recording fee. These deeds are exempt from the deed recording fee under Code Section 59-40-140(K).

AGENT TO PRINCIPAL TRANSFERS:

68. 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

69. 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

70. 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. Code 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.

71. 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. 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.”

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

Yes. Code 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 in neighborhood development of a nonresidential nature and will not be sold to a homebuyer, it is subject to the deed recording fee.

73. 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 deed recording fee is due on all real estate transfers involving to the shopping complex unless the transfer is otherwise exempt (*e.g.*, transfers to the government).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

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Columbia, South Carolina