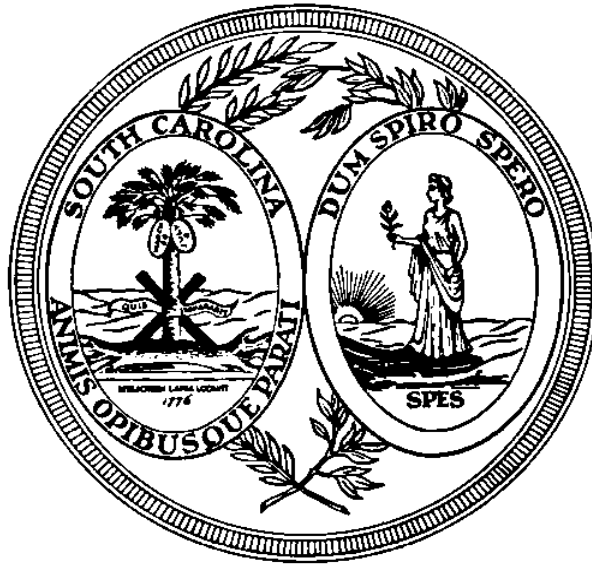


South Carolina
Department of Revenue
Deed Recording Fee Manual
2007 Edition



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The Honorable Mark Sanford, Governor
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*Introduction
and
Law and Discussion*

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 clerk of court or register of deeds, which remits the state portion of the fee to the Department of Revenue on a monthly basis.

Since the enactment of the deed recording fee in 1996, many questions concerning its application have arisen. The Department has previously addressed many of these questions in its Deed Recording Fee Manual (published in 1997), in Department advisory opinions, and through informal opinions provided to recording official, attorneys and taxpayers.

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. The manual 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 will be imposed for the privilege of recording a deed in which any lands and all improvements on the land, tenements, or other realty is transferred to another person. The fee is one dollar and 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 chapter¹.

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

¹ The provisions of subsection (B) became effective June 2, 2006. See Act No. 323 of 2006

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.

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)²;

(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 such stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the

²A 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.

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 the 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.

*Questions
and
Answers*

Questions and Answers:

The following questions and answers are common transactions or transaction 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.

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." 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." 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.

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:

<u>TRANSACTION</u>	<u>VALUE</u>
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 grantor 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.
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, 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.

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 SC Revenue Procedure #97-3.

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 realty³, 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.), 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)),
- 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 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
- f) 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?

³ 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.

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)),
- 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 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
- f) 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)), and

b) 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)),

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)). Note: 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.), and
- e) 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 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.

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.

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.

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 advisory opinion concerning deed 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 advisory opinion concerning deed 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 advisory opinion 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.

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 USCS 1717, and 12 USCA 1723a
Federal Home Loan Mortgage	12-24-40(3) & 12 USCA 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 deed from a Master-in-Equity to the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage (“Freddie Mac”), the transfer 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.

Chapter 7 Bankruptcy Deeds:

32. 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.

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.A. Section 1146 if the transfer is under a plan confirmed under 11 U.S.C.A. Section 1129. If the transfer is not under a plan confirmed under 11 U.S.C.A. 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.A. Section 1231 if the transfer is under a plan confirmed under 11 U.S.C.A. Section 1225. If the transfer is not under a plan confirmed under 11 U.S.C.A. 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 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 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 USCS 1717 and 12 USCS 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 USCS 2011 and 12 USCS 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 USCS 2071 and 12 USCS 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 USCS 2091 and 12 USCS 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.

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 (“Freddie Mac”) subject to the deed recording fee?

Deeds that transfer realty to the Federal Home Loan Mortgage Corporation (“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.

54. Are deeds that transfer realty from the Federal Home Loan Mortgage Corporation (“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.

Internal Revenue Code Section 1031 Tax Deferred Exchange Deeds:

57. 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 #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 #99-2. (See SC Revenue Ruling #99-2 attached as Exhibit “A” on page 48.)

Manufactured Homes:

58. 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:

59. 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:

60. 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.

Easements and Right-of-Ways:

61. Is the recording of a deed that conveys an easement or a right of way to another person subject to the deed recording fee?

The recording of a deed that conveys an easement or a right of way 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.

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

Deeds to Obtain Construction Loans:

To best address Questions #62 and #63 (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 (“ABC”) 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. Mr. X transfers the realty to ABC under an agreement that ABC 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.

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.

62. Is the deed that transfers realty from Mr. X to ABC Construction Company as discussed in the facts, so that ABC may obtain a construction loan to build a home for the 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 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, the statute, under Code Section 12-24-30(C), allows the taxpayer to use that figure in computing the deed recording fee due.

63. Is the deed that transfers the same realty, as discussed in the facts, from ABC Construction Company 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.

*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.

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.

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

Affidavit of Value:

An affidavit to be filed with a deed and that affidavit must show the value of the realty. For deeds exempt under the law, the value will not be required to be stated on the affidavit. Such affidavits must state the reason why the deed is exempt from the fee. The affidavit required by this section must be signed by a responsible person connected with the transaction and the affidavit 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 shall file these affidavits in his office.

The clerk of court or register of deeds may, at his discretion, waive the affidavit requirement. 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."

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.

The department has included in this manual sample affidavits. The department is not requiring the use of these affidavits, but is providing them in order to assist recording officials and taxpayers. In order to simplify the process of preparing an affidavit, please feel free to photocopy this sample affidavit or to incorporate it into a computer word processing program.

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

The State fee must be paid as follows: ten cents of each one dollar and thirty cents into Heritage Land Trust Fund; twenty cents of each one dollar and thirty cents into South Carolina Housing Trust Fund; and one dollar of each one dollar and thirty cents into the State general fund. The county fee must be paid into the general fund of the county.

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 portion of the fee will be retained by the county.

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.sctax.org).

Refund Procedures:

The following outlines the procedure for seeking a refund when a taxpayer believes he has overpaid the deed recording fee with respect to a particular deed.

The new deed recording fee requires that each deed have a notation placed upon it by the Clerk of Court or the Register of Deeds ("ROD"). This notation must include the date the deed was filed, 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.

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

1. The original deed and the original affidavit (if the requirement for the affidavit has not been waived by the clerk or register) must be presented to the Clerk of Court or ROD. The Clerk or ROD will verify that the notation on the deed is the notation placed on the deed by the Clerk or ROD. The Clerk or ROD will then sign a letter or form verifying that the notation is authentic and present this to the taxpayer.

2. The taxpayer should then forward the original deed, the original affidavit and the notation verification letter or form to the Department of Revenue. The taxpayer should also include a cover letter requesting the refund and containing all the information required by Code Section 12-60-470. (See the attached copy of Code Section 12-60-470.) All refund requests for deed recording fees should be mailed to:

SC Department of Revenue
Miscellaneous Taxes
P.O. Box 125
Columbia, South Carolina 29214

All refund requests received without the notation verification letter or form will be sent back to the taxpayer with a letter stating that the notation must first be verified by the Clerk or ROD and that the refund request must contain the verification letter or form. Refunds will also not be issued unless the Department receives the original deed and the original affidavit (unless the requirement for the affidavit has been previously waived by the Clerk or ROD).

3. If a refund is due, the Department will refund the State portion to the taxpayer and issue an order to the Clerk or ROD to refund the taxpayer the county portion of the fee. The Clerk or ROD should not issue a refund for the county portion of the fee unless they have received a refund order from the Department of Revenue. The Department, prior to returning the original deed and other documentation to the taxpayer, will note on the deed the date of the refund and the amount of the refund issued/ordered.

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 Clerk of Court or ROD.

*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>
Grantor	Grantee	Tax Due by Grantor *
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

* Pursuant to Code Section 12-24-20(A), the grantee has a secondary liability for the fee.

** 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.

Affidavits

SAMPLE AFFIDAVITS:

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

(A) The clerk of court or register of deeds shall require an affidavit showing the value of the realty to be filed with a deed.

For deeds exempt under 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. 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.

(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.

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. These sample affidavits are attached.

Finally, 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.”

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.

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. 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 before me this
Notary Public for _____
My Commission Expires: _____

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. 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 in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided 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 such stock or interest held by the grantor. However, 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; 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 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.

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 before me this _____ day of _____ 20_____

Notary Public for _____
My Commission Expires: _____

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. 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 in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided 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 such stock or interest held by the grantor. However, 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; 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 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.

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

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) 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 \$ 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 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.

Example B: 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.

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) 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 \$ 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 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.

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: \$ 121,000.00
- (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: \$ 121,000.00

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

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) 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 \$ 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 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: \$ 75,000.00
- (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: \$ 75,000.00

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

Exhibits

Exhibit “A”

SC Revenue Ruling #99-2

I.R.C. Section 1031 Tax Deferred Exchanges

SC REVENUE RULING #99-2

- SUBJECT:** I.R.C. Section 1031 Tax Deferred Exchanges
(Deed Recording Fee)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict
herewith.
- REFERENCES:** S. C. Code Ann. Section 12-24-10 (Supp. 1998)
S. C. Code Ann. Section 12-24-30 (Supp. 1998)
S. C. Code Ann. Section 12-24-40 (Supp. 1998)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1998)
SC Revenue Procedure #97-8
- SCOPE:** A Revenue Ruling is the Department of Revenue's official
advisory opinion of how laws administered by the Department
are to be applied to a specific issue or a specific set of facts, and
is provided as guidance for all persons or a particular group. It is
valid and remains in effect until superseded or modified by a
change in the statute or regulations or a subsequent court
decision, Revenue Ruling or Revenue Procedure.

Background Information:

Section 1031 of the Internal Revenue Code allows taxpayers to exchange realty and defer the income tax due on the transaction until a later date. The tax is usually deferred until the time the realty received through the exchange is sold. Sometimes exchanges under Section 1031 are handled through an intermediary.

There are several ways in which a Section 1031 exchange can be handled. How these exchanges are handle will affect the application of the deed recording fee imposed under Code Section 12-24-10 et. seq. This ruling, by use of examples, will address the application of the deed recording fee to such exchanges.

Discussion:

Code Section 12-24-10 imposes the deed recording fee and reads:

In addition to all other recording fees, a recording fee will be imposed for the privilege of recording a deed in which any lands and all improvements on the land, tenements, or other realty is transferred to another person. The fee is one dollar and 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.

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.

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);
- (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 in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided 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 such stock or interest held by the grantor. However, 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 the 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.

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 deed recording fee is based 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 deed recording fee is based 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, under certain Section 1031 exchanges an intermediary is employed. In most cases, the intermediary is an agent for a principal⁴, one of the persons exchanging realty. Under the deed recording fee law and the general and case law regarding an agent and principal:

1. a deed transferring realty to an agent from his principal without consideration is exempt from the deed recording fee;
2. a deed transferring realty from an agent to his principal purchased for and with the funds of the principal is exempt from the deed recording fee; and,
3. a deed transferring realty from an agent to his principal purchased for and with the funds of the agent, who will be reimbursed by the principal for the funds expended in purchasing the realty, is subject to the deed recording fee since the reimbursement constitutes consideration under the deed recording fee law.

Note: A fee paid by the principal to the agent solely for handling the transaction is a fee paid for a service and is not consideration paid for the transfer of realty.

Conclusion and Examples:

The exchange of realty pursuant 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 following examples will be used to provide guidance as to how the deed recording fee is applied to these exchanges. **In order to simplify the explanation of how the deed recording fee applies to Section 1031 exchanges, please note that none of the examples below involve exempt transactions under Code Section 12-24-40, realty with a lien or encumbrance upon it, or transfers involving corporations and their stockholders, partnerships and their partners, trusts, or trust beneficiaries.**

⁴ As stated above, in most cases an intermediary is an agent for a principal; however, for income tax purposes (see the regulations under I.R.C. Section 1031) certain qualified intermediaries are not treated as agents.

Example 1:

Two-Party Exchange or Swap: John Smith transfers realty X to Jane Doe who in turn transfers realty Y to John Smith.

Deed 1 (Realty X) - John Smith to Jane Doe:

Subject to the fee based on one of the following:

- (a) the fair market value of realty Y,
- (b) the fair market value of realty X, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Deed 2 (Realty Y) - Jane Doe to John Smith:

Subject to the fee based on one of the following:

- (a) the fair market value of realty X,
- (b) the fair market value of realty Y, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Example 2:

Purchase and Exchange: John Smith purchases realty X from Mike Public for cash. John Smith then transfers realty X to Jane Doe who in turn transfers realty Y to John Smith.

Deed 1 (Realty X) - John Smith to Mike Public:

Subject to the fee based on the cash paid.

Deed 2 (Realty X) - John Smith to Jane Doe:

Subject to the fee based on one of the following:

- (a) the fair market value of realty Y,
- (b) the fair market value of realty X, or

- (c) the fair market value for property tax purposes of either realty X or realty Y.

Deed 3 (Realty Y) - Jane Doe to John Smith:

Subject to the fee based on one of the following:

- (a) the fair market value of realty X,
- (b) the fair market value of realty Y, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Example 3:

Exchange and Sale: John Smith transfers realty X to Jane Doe who in turn transfers realty Y to John Smith. John Smith then transfers realty Y to Mike Public for cash.

Deed 1 (Realty X) - John Smith to Jane Doe:

Subject to the fee based on one of the following:

- (a) the fair market value of realty Y,
- (b) the fair market value of realty X, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Deed 2 (Realty Y) - Jane Doe to John Smith:

Subject to the fee based on one of the following:

- (a) the fair market value of realty X,
- (b) the fair market value of realty Y, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Deed 3 (Realty Y) - John Smith to Mike Public:

Subject to the fee based on the cash paid.

Example 4:

Direct Deeding: John Smith transfers realty X to Jane Doe. Jane Doe pays cash to Mike Public and Mike Public transfers realty Y to John Smith.

Deed 1 (Realty X) - John Smith to Jane Doe:

Subject to the fee based on one of the following:

- (a) the fair market value of realty Y,
- (b) the fair market value of realty X, or
- (c) the fair market value for property tax purposes of either realty X or realty Y.

Deed 2 (Realty Y) - Mike Public to John Smith:

Subject to the fee based on the cash paid by Jane Doe to Mike Public.

Example 5:

Simultaneous Exchange with Intermediary: John Smith transfers realty X to an intermediary. The intermediary then transfers realty X to Jane Doe for cash. The intermediary purchases realty Y from Mike Public for cash and then transfers realty Y to John Smith.

Deed 1 (Realty X) - John Smith to Intermediary:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Deed 2 (Realty X) - Intermediary to Jane Doe:

Subject to the fee based on the cash paid.

Deed 3 (Realty Y) - Mike Public to Intermediary:

Subject to the fee based on the cash paid.

Deed 4 (Realty Y) - Intermediary to John Smith:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Example 6:

Deferred Exchange #1 with Intermediary: In this example, the exchange is handled in two steps since the realty being received by the taxpayer has not yet been identified.

Step 1: John Smith wants to sell realty X but wants to handle it as an exchange for income tax reasons. Jane Doe wants to purchase realty X for cash. As such, John Smith transfers realty X to an intermediary who then transfers realty X to Jane Doe for cash.

Deed 1 (Realty X) - John Smith to Intermediary:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Deed 2 (Realty X) - Intermediary to Jane Doe:

Subject to the fee based on the cash paid.

Step 2: At a later date when realty has been identified by John Smith to replace realty X, the intermediary uses the cash he received in Step 1 to pay Mike Public for realty Y. Mike Public then transfers realty Y to the intermediary. The intermediary transfers realty Y to John Smith.

Deed 4 (Realty Y) - Mike Public to Intermediary:

Subject to the fee based on the cash paid.

Deed 5 (Realty Y) - Intermediary to John Smith:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Example 7:

Deferred Exchange #2 with Intermediary: This example is similar to Example 6 except that John Smith does not yet have a contract for realty X, the realty he wishes to sell. He has, however, identified realty Y as the realty he wishes to obtain.

Step 1: Using John Smith's money, the intermediary purchases realty Y from Mike Public for cash. Mike Public transfers realty Y to the intermediary.

Deed 1 (Realty Y) - Mike Public to Intermediary:

Subject to the fee based on the cash paid.

Step 2: At a later date when John Smith has found a buyer for realty X, realty X is transferred to the intermediary. The intermediary then sells realty X to Jane Doe for cash. The intermediary transfers realty X to Jane Doe. The intermediary then transfers realty Y to John Smith and returns to John Smith the money used in Step 1.

Deed 2 (Realty X) - John Smith to Intermediary:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Deed 3 (Realty X) - Intermediary to Jane Doe:

Subject to the fee based on the cash paid.

Deed 4 (Realty Y) - Intermediary to John Smith:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Example 8:

Deferred Exchange #3 with Intermediary: This example is similar to Example 7 except that the intermediary does not use John Smith's money. The intermediary uses his own money to make the first purchase.

Step 1: Using his own money, the intermediary purchases realty Y from Mike Public for cash. Mike Public transfers realty Y to the intermediary.

Deed 1 (Realty Y) - Mike Public to Intermediary:

Subject to the fee based on the cash paid.

Step 2: At a later date when John Smith has found a buyer for realty X, realty X is transferred to the intermediary. The intermediary then sells realty X to Jane Doe for cash. The intermediary transfers realty X to Jane Doe. The intermediary then transfers realty Y to John Smith and John Smith pays the intermediary cash as a reimbursement of the cash the intermediary paid to purchase realty Y in Step 1 of this transaction.

Deed 2 (Realty X) - John Smith to Intermediary:

Not subject to the fee since the intermediary is the agent for John Smith and since no consideration was paid for the transfer.

Deed 3 (Realty X) - Intermediary to Jane Doe:

Subject to the fee based on the cash paid.

Deed 4 (Realty Y) - Intermediary to John Smith:

Subject to the fee based on the cash paid as a reimbursement of the cash the intermediary paid to purchase realty Y in Step 1 of this transaction.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
January 11 , 1999

Exhibit “B”

South Carolina Deed Recording Fee Law
(As of the 2007 Session of the General Assembly)

Title 12 - Taxation
CHAPTER 24.
DEED RECORDING FEE

SECTION 12-24-10. Recording fee; exception.

(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.

SECTION 12-24-20. Liability for fee.

(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.

SECTION 12-24-30. "Value" defined.

(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 interests, 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.

SECTION 12-24-40. Exemptions.

Exempted from the fee imposed by this chapter are deeds:

- (1) transferring realty in which the value of the realty, as defined in 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 exchanged in order to effect the partition;
- (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, 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 descendant of any of them, and the grantor's and grantor's spouse's heirs 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;

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration 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;

SECTION 12-24-50. Remittance of fee.

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.

SECTION 12-24-60. Notations.

The clerk of court or register of deeds, before recording a deed subject to the fee imposed by this chapter, shall collect the fee and place a notation on the deed containing the following information: the date the deed was filed; the fee collected; and any other information required by the county. If the deed qualifies for an exemption under Section 12-24-40, the word "exempt" must be placed in the notation.

SECTION 12-24-70. Affidavits.

(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.

SECTION 12-24-80. Records of fees due and collected.

Every clerk of court or register of deeds and the county shall keep and preserve suitable records to determine the amount of fee due and collected under this chapter. The clerk of court or register of deeds and the county shall keep and preserve records for five years.

SECTION 12-24-90. Fee calculation.

(A) The fee imposed by this chapter is composed of two fees as follows:

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

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

(B) The state fee must be credited as follows:

(1) ten cents of each one dollar thirty cents into the Heritage Land Trust Fund;

(2) twenty cents of each one dollar thirty cents into the South Carolina Housing Trust Fund; and

(3) one dollar of each one dollar thirty cents into the general fund of the State.

(C) The county fee must be credited to the general fund of the county.

SECTION 12-24-95. State deed recording fee credited to South Carolina Conservation Bank Trust Fund.

Notwithstanding the provisions of Section 12-24-90(B)(3) of the 1976 Code, effective July 1, 2003, twenty-five cents of the one dollar thirty-cent state deed recording fee must be credited to the South Carolina Conservation Bank Trust Fund.

SECTION 12-24-97. Starting date for transfers on which fee based.

Notwithstanding the effective date provided in Section 3 of this act on which begins the transfer of a portion of the state deed recording fee to the South Carolina Conservation Bank Trust Fund, such transfers do not begin until July 1, 2004.

SECTION 12-24-100. Monthly payments to department; reports.

(A) The fees imposed by this chapter and collected by the clerk of court or register of deeds are due and payable to the department in monthly installments with a report on or before the twentieth day of the month following the month in which the fees were collected. The report required by this section must be filed by the county on a form or in the method prescribed by the department. The department, at its discretion, may require counties to remit the fee by electronic funds transfer or any other method considered appropriate.

(B) The department, at its discretion, may allow a county to file its report on a basis other than monthly.

(C) The county shall remit with each report only that portion of the fee that represents the state portion. The county portion of the fee must be retained by the county.

(D) When a return required by this section is filed and the fees due with it are paid in full on or before the final due date, including any date to which the time for making the return and paying the fees has been extended pursuant to the provisions of Section 12-54-70, the county is allowed a discount equal to three percent of the state's portion of the fees. In no case is a discount allowed if the return or fee on the return is received after the due date or after any extension granted by the department.

SECTION 12-24-110. Presumption concerning titles.

When an instrument has been recorded it is presumed that all requirements of law affecting the title to the realty have been complied with.

SECTION 12-24-120. Penalties.

(A) The penalty provisions of Chapter 54 of this title apply both to the state and county portions of the fee imposed by this chapter.

(B) If the clerk of court or register of deeds fails to collect the proper fee due, or place the notation on the instrument as required by this chapter, the clerk of court or register of deeds is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. This penalty may be waived or reduced by the department.

(C) If the person liable for the fee imposed by this chapter fails to pay the proper fee due, that person is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. This penalty may be waived or reduced by the department.

(D) All penalties and interest collected with respect to this fee must be paid proportionately into the Heritage Land Trust Fund, the South Carolina Housing Trust Fund, the general fund of the State, and the county general fund in accordance with Section 12-24-90(B).

SECTION 12-24-130. Lien for fees, penalties or interest.

The fee imposed under this chapter and any penalties and interest thereon are a debt owing to the State by the person or persons liable for the fee and are a lien on all property of these persons, but this lien is valid so as to affect the rights of purchasers for value, mortgagees, or judgement or other lien creditors only from the time when warrant is entered upon the transcript of judgments in the county, in the case of real property where the property is situate, and in the case of personal property, where the person liable for the fee resides or possesses personal property if the receiver is a resident of this State, or if the person is a nonresident, where the personal property is situate.

SECTION 12-24-140. Designation of office to collect fees.

If the governing body of a county determines that another office of the county shall administer the collecting of the fee as provided under this chapter, the county shall notify the department of this determination and provide the department a letter from the person assigned these duties stating that he is accepting this responsibility. The office designated to collect the fee is subject to all the applicable provisions of this chapter in place of the clerk of court or register of deeds.

SECTION 12-24-150. Promulgation of regulations; refunds; other laws.

(A) The department may promulgate regulations, issue instructions or advisory opinions, or provide any other information to the clerks of court, registers of deeds, or fee payors to ensure uniform administration and collection of the fee imposed by this chapter.

(B) All refund requests must be filed with the department, and it is the responsibility of the department to determine if a refund is due and order the issuance of any refund due.

(C) The provisions of Chapter 54, including the provisions of Section 12-54-85, and Chapter 60 of this title are applicable to the fee imposed by this chapter, and, for purposes of applying these chapters, the fee payor is deemed the taxpayer. For purposes of applying Chapter 60, if a clerk of court or register of deeds disagrees with a fee payor as to whether or not a transaction is exempt or as to the amount of the fee due, the fee payor may do one of the following:

(1) The fee payor may pay the fee and file a claim for refund request with the department under the provisions of Section 12-60-470. If the department determines that a refund is not due, the fee payor may appeal the matter to the Administrative Law Judge Division. If the department determines that a refund is due, the department shall refund the state portion of the fee and order the county to issue a refund for the county portion of the fee. Refund orders by the department may not be appealed by the county.

(2) The fee payor, upon filing an appeal with the department and a copy of the appeal with the clerk of court or register of deeds, may record the deed without payment of the fee. The appeal to the department must be administered in the same manner as appeals of property tax exemptions are administered by the department. If the department determines that the fee is due, the fee payor may appeal the decision to the Administrative Law Judge Division. If the department determines that the fee is not due, the county may not appeal that determination.

Exhibit “C”

South Carolina Deed Recording Fee Regulation 117-1350

REGULATION 117-1350. Deed Fee--Assumption of a Mortgage in the Conveyance of Real Property.

To set forth the true, full, and complete consideration, paid or to be paid, where any mortgage is assumed in the conveyance of real property, it is necessary for the deed or affidavit to state the Number of the Real Estate Mortgage Book and the Page Number, and the remaining balance assumed.