Title Topics

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Realty Transfer Fee Regulations Related Entities

Larry Fineberg, Senior V.P. & Regional Counsel of Chicago Title Insurance Company, has written us regarding an esoteric aspect of the Realty Transfer Fee. Those who remember the movie Animal House will recall Dean Wormer's invocation of a secret codicil to the Faber College constitution that he utilized to put the Deltas under "double secret probation." Well, the guys and gals at the New Jersey Treasury Department recently published a series of administrative regulations which govern the Realty Transfer Fee ["RTF"]. **NJAC 18:16-1.1** ***et seq***. (eff. Sept. 5, 2006). In large part, Larry points out, these are **not** new regulations, but rather a re-promulgation of rules which were previously in effect, and which expired in 2003. Thus, they do **not** affect the so-called "mansion tax"(which is imposed on the grantee in certain cases). The rules only deal with the RTF imposed on the **grantor**.

As suggested above, the regulations largely codify existing practice with respect to the RTF. However, there are a few sections to which close attention should be paid. For example, **N.J.A.C. 18:16-6.1** governs deeds between related entities. The rule begins by reminding us that no exemption exists *per se* for related-entity transfers. Deeds made in lieu of capital contributions to corporations, LLCs, etc., are thus subject to RTF, based on the value of the stock or interest in the grantee business entity received by the grantor. The section concludes: "When a value is indeterminable, the RTF is calculated on the assessed value of the property being conveyed ...".

Does the preceding statement refer only to deeds where (*e.g.*) the value of stock received by the grantor in the grantee corporation cannot be determined (because the corporation is not publicly traded)? Or does it refer to deeds where (*e.g.*) a corporation conveys to its subsidiary for nominal consideration and there are no existing mortgages on which to base the RTF? In such cases, will RTF be imposed based on the assessed value of the realty? The

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Talking with Susan Kruger

When did you get into the title business?

In the late 1970s I was enrolled in an MBA program in New York City and told my brother Stephen that I wanted to work. He told me to call so and so at Chicago Title Insurance Company and I could sell title insurance. I asked him what that was.

You didn't know?

Let's face it, there are many people out there who don't know what title insurance is or what it does or how important it is when you are buying real estate. So, I called his contact at Chicago Title, had a half dozen interviews and was hired as a field representative. Soon I was posted to the company's office near the Hudson County Court House, and I was selling title insurance.

After learning the ropes, I decided that a big company was not for me. I became a sales rep for an agency in Hudson County and became established as a no nonsense business getter and customer service person. I started Vested Title in 1981.

What distinguishes title agencies?

The first thing is to know what your clients expect from you. That might mean delivering title commitments by hand to save time, or going the extra mile to be certain that underwriting issues are resolved quickly and fairly. That's something we have been doing at Vested Title for 25 years and which we will continue to do.

Other companies believe that all you need to do to get business is to give out tickets to sporting events or bring bagels to the office. And there are some attorney offices who place their business with the agency that does just that. We focus instead on giving first class service day in and day out. Our clients tell us they would rather have their title work handled efficiently and on time rather than worry

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Happy Holidays from Us to You

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Susan Kruger*(Continued from page 1)*

about whether he has poppy or sesame bagels.

What do you think of the current business market?

I remember when I started that the title business had its seasons. The late fall was very quiet, so was the middle of the summer. In the mid 1980s that began to change and we started to see consistent levels of business year-round. You will remember that the collapse of the savings and loan industry in the late 1980s and the economy down turn in 1994 brought the industry to a halt. But, as always, the market rebounded and then took off like a rocket in the mid-1990s. Today, we are seeing another cycle where high housing prices have acted as a drag on the market although lending rates are favorable. There will have to be a correction where prices fall a bit before they bounce back.

Do you have any particular concerns?

We are seeing a lot of 100% financing situations. Typically, the house is a newly constructed two- or three-family home. 80% of the mortgage consists of a fixed rate first mortgage, 20% is a home equity loan. The problem I see is that these loans are predicated on there being no vacancy in the rental unit or units and stability in the interest rate market. I think that vacancies happen, and without any equity investment in the property, what is the owner's incentive to maintain the property and keep it attractive to prospective tenants?

How do you survive in this type of market?

Unlike other title agent, we do not cut staff when we hit a downturn. Our staff works hard for us when times are good, and we repay them in kind. Frankly, some of our competition over the past few years has been from title agencies started by mortgage companies and real estate brokers as a way to get a bigger piece of the pie. They are not sincere about what they do. And they are going to feel the crunch first and disappear. By maintaining our staff at capacity, we remain poised to pick up where we left off as soon as the market rebounds.

What do you see for the future?

We have been in business for more than 25 years because of our service. Our clients appreciate that, and with their help, I see us leading the industry for the next 25 years.

Realty Transfer Fee *(Continued from page 1)*

answer is unclear, but if the latter interpretation is adopted, the regulation would seem to be at odds with **N.J.S.A. 46:15-10(a),** which exempts from payment of RTF deeds "... for a consideration, as defined in [N.J.S.A. 46:15-5(c)] of less than $100.00". However, Larry reports that in one recent transaction, a deed for nominal consideration between related entities was rejected by the recording officer on the grounds that the regulation quoted above required payment of RTF in accordance with the assessed value.

Practical considerations-- The payment of RTF (or successful claiming of an exemption) is a condition precedent for recording. Thus, although the deed must be recorded in order that the transaction may be insured, RTF-related issues are not primarily the concern of title companies, but rather of the parties to the deed. Nevertheless, if a question exists as to the amount of the RTF due (if any) in a particular case, arrangements should be made to hold additional funds in reserve in the event the recording officer rejects the affidavit of consideration as submitted.

If you have had an interesting experience while recording documents that you would like to share with us, please contact us.

Vested Title Inc. — Our 25th Year

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