

**Transfer on Death Deeds (TODD)**  
**Under new Minnesota Statute §507.071**

Subd. 2. Effect of Transfer on Death Deed: A deed that conveys or assigns an interest in real property to a grantee beneficiary (which includes a successor grantee beneficiary) and that expressly states that the deed is only effective on the death of one or more of the grantor owners, transfers the interest to the grantee beneficiary upon the death of the grantor owner upon whose death the conveyance or transfer is stated to be effective.

Subd. 3. Rights of Creditors. The interest transferred, after the death of the grantor owner is transferred subject to all effective conveyances, assignments, contracts, mortgages, deeds of trust, liens, security pledges, judgments, tax liens and other encumbrances made by the grantor owner or to which the property was subject during the grantor owner's lifetime, including any claim by a surviving spouse.

Subd. 4. Multiple Grantee Beneficiaries. A TODD may designate multiple grantee beneficiaries to take title as joint tenants or tenants in common.

Subd. 5. Successor Grantee Beneficiaries. This is unique to a TODD. A TODD may designate one or more successor grantee beneficiaries or a class of successor grantee beneficiaries or both. So it could say - all of my children.

Subd. 6. Multiple Joint Tenant Grantors - Transfers the interest of the grantor owner only after the death of the last surviving grantor owner. If the last surviving joint tenant owner did not execute the TODD, the deed is ineffective. An estate in joint tenancy is not severed (it mains owned in joint tenancy) by execution of a TODD, unless the deed specifically states that it severs the joint tenancy ownership.

Subd. 7. A TODD may be executed by the Attorney-in-Fact.

Subd. 8. Recording Requirements. May be recorded without certification by County Auditor as to transfer of ownership and current and delinquent taxes and no CREV is required. If property is registered land, the Registrar of Titles shall accept the TODD for recording only if at least one of the grantors who execute the TODD appears of record to have an ownership interest in the property. No certification or approval is required by the Examiner of Titles.

Subd. 9. A TODD may transfer an interest to the trustee of an Inter Vivos Trust, a Testamentary Trust or other legal entity qualified to hold title to real property under Minnesota law.

Subd. 10. Revocation or Modification of TODD. (a) This also makes the TODD unique. The TODD may be revoked at any time by the grantor owner or, if there is more than one grantor owner, by any of the grantor owners. The revocation must be recorded before the death of the grantor owners. It is not effective until the revocation is recorded. If the property is owned as joint tenants and if the revocation is not executed by all of the grantor owners, the revocation is not effective unless executed by the last surviving grantor owner. (b) If the grantor owner(s) convey(s) to a third party subsequent to recording a TODD, no transfer of the conveyed interest shall occur on the grantor owner's death.

Subd. 11. Anti-lapse; Deceased Beneficiary; Words of Survivorship. (a) If a grantee beneficiary who is a grandparent or lineal descendent of a grandparent of the grantor owner fails to survive the grantor owner, the issue of the deceased grantee beneficiary who survive the grantor owner take in place of the deceased grantee beneficiary. (b) If a deed includes words of survivorship, such as to "my surviving children", then the beneficiary must survive the grantor owner.

Subd. 12. Lapse. If no beneficiaries survive the grantor owner, no transfer shall occur and the TODD is void.

Subd. 13. If the grantor owner executes and records more than one TODD conveying the same property, the TODD that has the latest acknowledgment date and that is recorded before the death of the grantor owner is the effective TODD and all other TODDs on the same property are void.

Subd. 16. A grantee beneficiary's interest under a TODD may be disclaimed as provided in Section 501B.86.

Subd. 18. The signature or consent of the grantee beneficiary under a TODD or the delivery of the TODD to the grantee beneficiary is not required.

Subd. 20. Proof of Survivorship and Clearance from Public Assistance Claims or Liens. An Affidavit of Identity and Survivorship with a certified copy of record of death as an attachment (similar to clearing a joint tenancy or life estate interest) may be combined with a Clearance Certificate and the combined documents may be recorded separately or as one document and are prima facie evidence of the facts stated.

Subd. 21. A TODD is not effective to transfer an interest in real estate acquired by the grantor owner subsequent to the date of signing of a TODD, unless there is specific language in the TODD that the TODD will apply to any interest in the described property acquired by the grantor owner after the signing or recording of the deed.

Subd. 22. A beneficiary to whom the interest is transferred after the death of a grantor owner shall be liable to account to the state or county agency which has a claim or lien authorized by law for medical assistance, but such liability is limited

to the value of the interest transferred to the beneficiary. To establish compliance that the lien is released, the beneficiary must record a Clearance Certificate.

Subd. 23. Clearance for Public Assistance Claims and Liens. This subdivision talks about applying for a Clearance Certificate, which must contain the legal description of the property. If the property is Registered Property, a new Certificate of Title must not be issued until a Clearance Certificate is recorded.

Subd. 24. Form of Transfer on Death Deed. A TODD **may** be substantially in the following form.

Transfer on Death Deed

I (we) \_\_\_\_\_ (grantor owner or owners and spouses, if any, with marital status designated), grantor(s), hereby convey(s) and quitclaim(s)

to \_\_\_\_\_ (grantee beneficiary, whether one or more) effective (check only one of the following)

\_\_\_ on the death of the grantor owner, if only one grantor is named above, or on the death of the last of the grantor owners to die, if more than one grantor owner is named above, or

\_\_\_ on the death of (name of grantor owner)

\_\_\_\_\_ (must be one of the grantor owners named above), the following described real property.

(Legal Description)

If checked, the following option statement applies:

\_\_\_ When effective, this instrument conveys any and all interests in the described real property acquired by the grantor owner(s) before, on or after the date of this instrument.

(Acknowledgment)

\_\_\_\_\_  
Signature of grantor(s)

Subd. 25. Form of Instrument of Revocation. An instrument of revocation may be substantially in the following form.

Revocation of Transfer on Death Deed

The undersigned hereby revokes the transfer on death deed recorded on \_\_\_\_\_, as Document No. \_\_\_\_\_ (or in Book \_\_\_\_\_ of \_\_\_\_\_, page \_\_\_\_\_) in the office of the (County Recorder)(Registrar of Titles) of \_\_\_\_\_ County, Minnesota, affecting real property legally described as follows:

(legal description)

Dated:

\_\_\_\_\_  
Signature

(acknowledgment)

M.S. 508.52. Conveyance. This statute was amended to change the words "file" and "filed" to "record" and "recorded". It also stated that the Registrar shall not carry forward as a memorial on the new Certificate of Title any memorials of a TODD if the grantors of the TODD retain no fee interest in the land covered by the new Certificate.

M.S. 524.2-702. Requirement of Survival for 120 hours. This added language that states that a beneficiary named in a TODD under Section 507.071 who fails to survive by 120 hours the grantor owner upon whose death the conveyance to the beneficiary becomes effective, is deemed to have predeceased the grantor owner for purposes of determining title to property passing by the TODD.

Effective Date. The new statutes are effective August 1, 2008 and apply to instruments of conveyance of real property recorded on or after that date, regardless of the instrument's date of execution.

## AFFIDAVIT OF LOST MORTGAGE RECORDING THEORY

Minnesota Statutes, Section 507.29, provides for affidavits to establish prima facie evidence of existence of certain facts such as marital status, corporate existence, and the like. However, it does not address lost mortgages or other documents and is limited to those matters set forth in the statute.

Minnesota Statutes, Section 507.25 does allow a custodian of a document or record to certify that a copy being submitted for recording is the same as the original. If the lender is viewed as the "custodian", and a copy of the original document is attached to the affidavit, the opinion is that it meets the criteria of 507.25 and may be recorded.

However, having stated that position, one must look at Minnesota Statutes, Section 287.10, which is the prepayment of mortgage registration tax to the County Treasurer. The statute specifically provides that no mortgage may be recorded without payment of the mortgage registration tax due. Additionally, the recording of a mortgage without payment of the registration tax may make the mortgage unenforceable upon default by the borrower and prevent foreclosure by the mortgagee. That is most certainly the case in a foreclosure by action because the statute specifically states that the mortgage will not be received into evidence in court while also indicating that it is not valid notice.

If the affidavit is in recordable form and a copy of the original mortgage is attached, upon payment of the mortgage registration tax to the County Treasurer, the document is recordable. The issue still remains whether the mortgage is enforceable against the mortgagor upon default, and certainly the safest and probably preferred method of perfecting the mortgage would be by court order through a court proceeding; but that issue is beyond the concern of the Recorder's office.

## MINNESOTA ■ REVENUE

July 15, 2008

Pam Hameister  
Olmsted County PRL  
Recording & Abstracting  
Government Center  
151 4th Street SE  
Rochester, Minnesota 55904-3716

Dear Ms. Hameister:

Thank you for your question concerning certificates of real estate value (CRV's). You have asked if filing a CRV is necessary when processing deeds that have a consideration of less than \$500 stated on the deed.

Minnesota Statutes 272.115, subdivision 1, states that:

“whenever any real estate is sold for a consideration in excess of \$1,000 [emphasis added], whether by warranty deed, quitclaim deed, contract for deed or any other method of sale, the grantor, grantee or the legal agent of either shall file a certificate of value with the county auditor in the county in which the property is located when the deed or other document is presented for recording.”

Therefore, it is not necessary to file a CRV for considerations of \$1,000 or less. The *de minimis* amount was changed in the 2000 legislative session.

If you have any other questions or concerns please direct them to [proptax.questions@state.mn.us](mailto:proptax.questions@state.mn.us).

Sincerely,



**DREW IMES, State Program Administrator**  
Information Education Section  
Property Tax Division

## MINNESOTA • REVENUE

**Mortgage and Deed Tax Memo**

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DATE: July 9, 2008

TO: Mortgage and Deed Tax Contacts

FROM: Lance Staricha, Attorney  
Appeals and Legal Services

QUESTIONS: Bill Lonergan  
(651) 556-4721

SUBJECT: 2008 Law Changes; Mortgage Registry and Deed Taxes

**Hennepin county and Ramsey county deed and mortgage taxes.**

(1) Minn. Stat. § 383A.80, subd. 4, was amended to reinstate the Ramsey county deed and mortgage tax through December 31, 2012. Effective May 31, 2008. 2008 Minn. Laws, Chapter 366, Article 9, Section 10.

(2) Minn. Stat. § 383B.80, subd. 4, was amended to reinstate the Hennepin county deed and mortgage tax through December 31, 2012. Effective May 31, 2008. 2008 Minn. Laws, Chapter 366, Article 9, Section 13.

(Proposals in 2008 to authorize county deed and mortgage taxes for other counties, including Anoka, Dakota, and St. Louis counties, were not enacted.)

**Deed tax; Transfer-on-death deeds.** Minn. Stat. § 287.22, was amended by adding the new clause (15), to provide that transfer-on-death deeds defined under Minn. Stat. § 507.071 (also enacted this year) are exempt from the deed tax imposed under Minn. Stat. § 287.21. No provision exempts the affidavit of identity and survivorship -- that is recorded upon the death of the grantor in order to transfer the record title of the property to the grantee -- from the deed tax. Effective for documents recorded on August 1, 2008 or thereafter. 2008 Minn. Laws, Chapter 341, Article 2, Section 4.

**Deed tax; Exemption for redeeming debtors.** Minn. Stat. § 287.22, clause (12), was amended to clarify the exemption from deed tax for a debtor who redeems their property from a mortgage or other lien foreclosure sale. The exemption previously used the word *lienee* (i.e., the owner of the encumbered property) to describe the exempt party, but that term has undergone a change of usage in recent years. This change will ensure that the exemption only applies if a person who owned the property prior to a foreclosure, or their assignee, heir, personal representative, or successor, redeems it; not a junior creditor. Effective March 8, 2008. 2008 Minn. Laws, Chapter 154, Article 14, Section 3.

**Deed tax; Changes related to the electronic recording of real estate documents.** Minn. Stat. § 287.08; § 287.241, subd. 1; and § Minn. Stat. § 287.25, were amended to provide that the county treasurer shall affix their endorsement that the deed tax has been paid, and of the tax amount, to an electronic document by use of an electronic method; and, that no actual signature by the treasurer will be required in the case of electronic documents. The method for paying the tax must be arranged in advance between the submitter and the county. Minn. Stat. § 287.241, subd. 2, was amended to require that documents submitted electronically must include the certificate of value number assigned by the electronic certificate of value system established by the department of revenue. Effective August 1, 2008. 2008 Minn. Laws, Chapter 238, Article 3, Sections 3-5.

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**Deed tax; Deeds to governmental subdivisions for a "public use."** Minn. Stat. § 287.2205, was amended to clarify that the deed tax on conveyances of tax-forfeited land to a governmental subdivision for authorized public uses, without the payment of monetary consideration, is \$1.65. Effective March 8, 2008. 2008 Minn. Laws, Chapter 154, Article 14, Section 3.

**Deed tax; Electronic certificate of value system numbers.** Minn. Stat. § 287.241, subd. 2, was amended, to require that documents subject to the deed tax that are submitted electronically must include the certificate of value number assigned by the electronic certificate of value system established by the department of revenue. Effective August 1, 2008. 2008 Minn. Laws, Chapter 238, Article 3, Section 4.

**Deed tax; References to *Internal Revenue Code*.**

(1) Minn. Stat. § 287.20 was amended, by adding the new subd. 10, to provide that -- for the purposes of the Minnesota deed tax under Minn. Stat. § 287.21 to § 287.31 -- the phrase *Internal Revenue Code* has the meaning given in Minn. Stat. § 289A.02, subd. 7. Effective May 31, 2008. 2008 Minn. Laws, Chapter 366, Article 11, Section 16. (Minn. Stat. § 289A.02, subd. 7, was amended in 2008 to provide that the phrase *Internal Revenue Code* means the *Internal Revenue Code of 1986, as amended through February 13, 2008*. Effective March 8, 2008. 2008 Minn. Laws, Chapter 154, Article 4, Section 1.)

(2) Minn. Stat. § 287.20, subds. 3a and 9 were amended so that the phrase *Internal Revenue Code*, as it appears in the deed tax definitions for *Designated transfer* and *Reorganization*, has the meaning given in Minn. Stat. § 289A.02, subd. 7. There are three references to the *Internal Revenue Code* in subds. 3a and 9. Prior to this change, each reference was to the *Internal Revenue Code of 1986 as amended through December 31, 2004*. Effective May 31, 2008. 2008 Minn. Laws, Chapter 366, Article 11, Section 16. (Minn. Stat. § 289A.02, subd. 7, was amended in 2008 to provide that the phrase *Internal Revenue Code* means the *Internal Revenue Code of 1986, as amended through February 13, 2008*. Effective March 8, 2008. 2008 Minn. Laws, Chapter 154, Article 4, Section 1.)

**Questions:**

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## Minnesota Foreclosure Legislation 2008 (final as of 5/30/08)

- Ten bills related to the work of the Foreclosure Working Groups have been signed into law.
- The Minnesota Subprime Foreclosure Deferment Act, designed to reduce certain borrower monthly payments for one year, narrowly passed the senate (34-33) and the house (81-53). The Governor vetoed the bill.
- The Omnibus Tax Bill included two provisions related to foreclosures:
  - Special levy above levy limits for cities to secure, maintain, or demolish foreclosed or abandoned residential properties, and
  - Technical language to raise the annual volume cap on debt used to refinance mortgages to avoid foreclosure if currently proposed Federal legislation is adopted.

### Foreclosure Related Bills in Minnesota Legislature, 2008

Working Group Recommendations				
HF 3476 (Kohls)	SF 2908 (Higgins)	Landlord and tenant notice requirements under foreclosure and contract cancellation proceedings	Provides tenant protections when properties are under foreclosure including improved notices, allowing renters to withhold final months rent if a refundable security deposit is outstanding and extends lease termination notice requirement when lease is signed during redemption time.	S: Passed (3/6/08) returned H: Passed as amended (4/1/08)  Session Law Ch. 177 (4/6/08)
HF 3428 (Gunther)	SF 2909 (Olseen)	Right of tenants to pay utility bills modifications	Allows tenant to contact utility providers and become the customer of record.	S: Passed (3/6/08) returned H: Passed as amended (4/1/08)  Session Law Ch. 313 (5/15/08)
HF 3517 (Davnie)	SF 2910 (Higgins)	Eviction case mandatory records expungement requirement	Mandates expungement of eviction record if due to a foreclosure.	S: Passed (3/5/08) H: Passed (4/1/08) Session Law Ch. 174 (4/4/08)
HF 3475 (Mullery)  HF 3420	SF 2912 (Scheid)	Mortgage foreclosure proceedings modifications and foreclosure prevention counseling	Requires foreclosure prevention counseling offers, prescribes homeowner and tenant notices, requires holder of the mortgage or representative to respond to sheriff requests for payoff and financial information and modifies publication requirements.	S: Passed (3/5/08) H: Second Reading  Amended to 3420 In conference  Session Law Ch. 341 (5/18/08)
HF 3516 (Davnie)	SF 2914 (Rest)	Foreclosure data practices requirements; statewide foreclosure data collection and reporting system study	Requires specific foreclosure data elements to be collected and establishes a "Statewide Foreclosure Data Collection" group to study the development and implementation of an electronic system for collecting and accessing statewide foreclosure data.	S: Passed (4/7/08) H: Passed as amended (4/1/08)  Session Law Ch.238 (4/25/08)

HF 3473 (Hilstrom)	SF 2918 (Higgins)	Reduced mortgage foreclosure redemption period proof of abandonment requirements modifications	Facilitates use of 5-week redemption period to reduce the time vacant houses remain in redemption.	S: Passed (3/5/08) H: Passed (4/1/08)  <b>Session Law Ch.178 (4/4/08)</b>
HF 3478 (N. Peterson)	SF 2915 (Moua)	Human rights hearings civil penalties and punitive damages provision modification; residential mortgage fraud penalties sentencing provision modification	Raises cap on punitive damages allowable under the MN Human Rights Act for fair housing violations. Gives prosecutors ability to charge other crimes.	S: Passed (3/31/08) H: Passed (4/17/08)  <b>Session Law Ch.215 (4/24/08)</b>
HF 3346 (Davnie)	SF 3073 (Higgins)	Mortgage foreclosure prevention assistance increase	Removes the \$5,500 cap under the MHFA Foreclosure Prevention Assistance Program.	S: Passed (4/28/08) H: Passed (4/1/08)  <b>Session Law Ch.362 (5/27/08)</b>
HF 3226 (Davnie)	SF 2881 (Scheid)	Contracts for deed and mortgage lending regulation	Increases applicability of interest rate caps on contract for deeds to properties \$300k or less (previously \$100k).	S: Passed (3/6/08) H: Passed (4/17/08)  <b>Session Law Ch.276 (5/8/08)</b>
HF 3477 (Gardner)	SF 2917 (Marty)	Manufactured homes lending practices and default regulation provisions	Extends protections of the 2007 anti-predatory lending legislation to manufactured homes.	S: Passed (4/30/08) H: Passed (4/28/08) <b>Session Law Ch.273 (5/8/08)</b>
HF 3479 (Clark)	SF 2911 (Higgins)	District court fees exemption for landlord tenant actions during redemption period	Eliminates filing fee in tenant remedies actions in foreclosure situations.	Did not meet deadline.
<b>Other Foreclosure Legislation</b>				
HF 3839 (Lillie)	SF 3154 (Scheid)	Residential mortgage originators and servicers borrower eligibility consideration requirements	Lists specific items to consider when determining a borrower's ability to pay.	S: Passed (3/6/08) H: Passed (4/21/08)  <b>Session Law Ch. 241 (4/25/08)</b>
HF 3612 (Davnie)	SF 3396 (Anderson)	Minnesota Subprime Foreclosure Deferment Act of 2008	Defers foreclosure for one year provided that borrower with a sub-prime or negative amortization loan pays reduced monthly amount.	S: Second reading H: Second reading  <b>Vetoed (5/29/08)</b>
HF 3149 (Lenczewski, Marquart)		Omnibus Tax Bill	<ol style="list-style-type: none"> <li>1. Special levy above levy limits for cities to secure, maintain, or demolish foreclosed or abandoned residential properties (Art. 3, sec 1), and</li> <li>2. Technical language to raise the annual volume cap on debt used to refinance mortgages to avoid foreclosure if currently proposed Federal legislation is adopted. (Art. 5, sec.38)</li> </ol>	Presented to Gov.  <b>Session Law Ch. 366 (5/29/08)</b>