



Short Sales - Documentary Stamps On Debt Forgiven

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Under an August 7, 2008 advisory, the Florida Department of Revenue (“DOR”) has taken the position that the amount of forgiven indebtedness on a short sale is part of the taxable consideration for computing documentary stamps (“doc stamps”) on a short sale deed. Doc stamps are computed as follows: total purchase price + total debt forgiven. Please be advised, this requirement may result in a seller having to bring cash to complete the sale, as it is highly unlikely a lender will reduce their payoff to cover that portion of the doc stamp taxes that are due on the benefit realized by the seller.

Hypothetical Example and Computation:

Imagine a hypothetical owner who has a 1st mortgage with an outstanding total indebtedness (principal, interest, default interest, late fees, attorney fees, etc.) of \$250,000, and a 2nd mortgage with an outstanding total indebtedness of \$50,000. The two lenders have agreed to a short sale price of \$220,000, with the 1st mortgage receiving a payoff of \$204,700 and the 2nd mortgage receiving a payoff of \$1,000:

Purchase Price	\$ 220,000
Expenses, realtor, title, etc	\$ 14,300
Release to 2nd Mortgage	\$ 1,000
Balance to 1st Mortgage	\$ 204,700

Doc stamps will be due on:

Purchaser Price	\$ 220,000
Forgiveness of debt on 1st Mort	\$ 45,300
<u>Forgiveness of debt on 2nd Mort</u>	<u>\$ 49,000</u>
Taxable Consideration	\$ 314,300

Doc Stamps on Purchase	\$ 1,540
<u>Doc Stamps on Forgiven Debt</u>	<u>\$ 660</u>
Total Doc Stamps on Deed @ \$0.70/\$100	\$ 2200

In order to close any short sales and be in compliance with DOR requirements, we must obtain an estoppel letter(s) from each short sale lender(s). In addition to the normal requirements, these estoppel letters MUST now set forth the total amount due on the mortgage, including all fees, costs, interest, etc., as well as the total amount to

be paid to them for their satisfaction. Very few lenders have been showing the total due under the mortgage as part of their short sale letters, and for the next several months this may present an additional delay factor on any Florida short sale approval.

The correctness of the DOR's application of Florida's tax law to the forgiveness of indebtedness has been questioned, and the DOR is currently reviewing the same. However, until the current DOR position has been

reversed, or legislatively fixed, doc stamps are payable at the time of the closing on both the purchase price and the total amount of debt forgiven. If the DOR position is reversed or their position changes after a transaction is completed and as a result, doc stamp taxes were over paid, the seller can seek a refund by applying online at the DOR website.

Should you have any questions please feel free to contact me. Thank you. ■

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