

First Jersey Title Reports

*a periodic newsletter from First Jersey
to keep you up to date with the changes in Title Services.*



— Division of Taxation —

Revised Notice to Real Estate Closing Attorneys/Settlement Agents on Short Sales: GIT/REP-4 Waiver June 8, 2009

The recent increase in mortgage defaults in New Jersey and across the country has brought on real estate transactions commonly known as “short sales.” In a short sale transaction, the defaulting seller (mortgagor) works out an agreement with the lender to avoid the need for a foreclosure action. Instead of signing over a deed to the lender (which means the lender then has to sell the property to try to recoup all or part of the outstanding mortgage debt plus costs), the seller and the lender agree that in return for the lender not pursuing a foreclosure action, the seller will sell the property (usually at a loss or no income gain) and the lender will agree to take the proceeds from the sale with no proceeds going to the seller. Therefore, a real estate sale by a seller/grantor that is subject to a short sale where there is a loss or no income gain, is, in effect, very similar to a deed in lieu situation which does not require the collection at closing of a minimum of 2% of the consideration representing income tax withholding on estimated gain from the real property transfer.

However, this needs to be confirmed by the Division before the deed may be recorded by the county recording officer. Accordingly, when a seller (non-resident or about to be a non-resident) is claiming that his/her real property is being sold as a short sale **with a loss or no income gain**, the seller or settlement agent must send the Division a copy of the proposed deed, HUD-1 statement, a statement from the lender that this is a short sale and that all proceeds from the sale will go to the lender with the seller receiving no proceeds, and a GIT/REP-4 waiver form. It is also helpful if a copy of a complaint in foreclosure and judgment in foreclosure, if any, be forwarded to the Division for further confirmation of the need for the seller to enter into a short sale. If the documentation supports the non-resident seller's request for a waiver, the GIT/REP-4 will be stamped with the Division's raised seal and returned to the seller or settlement agent for filing with the deed.

Example 1: Non-resident seller bought a house for \$200,000 and took out a \$175,000 mortgage. Due to financial problems, seller agrees to sell the house in a short sale at a price equal or less than \$200,000 to avoid foreclosure. No GIT withholding is due because of the short sale and there is no reportable gain.

Example 2: Non-resident seller bought a house for \$200,000 and took out a \$175,000 mortgage. In time, the house increased in value and seller refinanced mortgage in the amount of \$400,000. Subsequently, however, due to financial problems and a declining real estate market, seller agrees to sell the house for \$300,000 in a short sale to avoid foreclosure. GIT withholding is due and a GIT/REP-1 form must be filed because there is a reportable gain on the sale.

Important: All inquiries concerning short sales should be directed to: New Jersey Division of Taxation, Regulatory Services Branch, 50 Barrack Street, P.O. Box 269, Trenton, New Jersey 08695-0269 or by fax at (609) 989-0113.

Last Updated: Tuesday, 06/09/09

State of New Jersey, Department of the Treasury, Division of Taxation

If you did not receive this message directly from First Jersey Title Services Inc. and would like these Newsletters in the future, please send your name and email address to: info@firstjerseytitle.com and we will add you to our Newsletter Address Book.

This newsletter provides general information only. The information contained herein, while we believe to be reliable and accurate, should not be used as a substitute for review of your specific situation with your counsel or advisor. In no circumstances is this newsletter intended to be a complete treatise of the subject matter. It is intended as insight into new developments and a beginning point for gathering additional information.

First Jersey Title Services Inc.

P.O. Box 2525

Fair Lawn, NJ 07410

201-791-4200 fax 201-791-9050

www.firstjerseytitle.com