

SENATE BILL NO. 390—COMMITTEE ON TAXATION

MARCH 29, 2005

Referred to Committee on Taxation

SUMMARY—Makes various changes regarding applicability and administration of certain taxes on transfers of real property. (BDR 32-760)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to transfers of real property; making various changes regarding the applicability and administration of certain taxes on transfers of real property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 375 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A county recorder who has any question of law regarding the imposition or collection of any tax imposed by this chapter shall request an opinion from the district attorney pursuant to NRS 252.160. The district attorney shall request an opinion on the question from the Attorney General pursuant to NRS 228.150 if:

(a) The county recorder informs the district attorney that there is a conflict between the opinions of two or more district attorneys in this State on the question; or

(b) The district attorney:

(1) Chooses not to render an opinion on the question; or

(2) Determines that he will not be able to render an opinion on the question within a reasonable time.

2. A county recorder shall not delay the recordation of any document pending the issuance of an opinion requested from the



1 *Attorney General pursuant to subsection 1 if the appropriate fees*
2 *and taxes, as determined by the county recorder, have been paid.*

3 3. *If, according to an opinion issued by the Attorney General*
4 *in response to a request submitted pursuant to subsection 1, the*
5 *amount of any taxes received by a county recorder differs from the*
6 *amount required by law, the difference between those two amounts*
7 *must be refunded or collected by the county recorder, as*
8 *appropriate.*

9 **Sec. 2.** NRS 375.010 is hereby amended to read as follows:

10 375.010 1. The following terms, wherever used or referred to
11 in this chapter, have the following meaning unless a different
12 meaning clearly appears in the context:

13 (a) "Buyer" means a person or other legal entity acquiring title
14 to any estate or present interest in real property in this State by deed,
15 including, without limitation, a grantee or other transferee of real
16 property.

17 (b) "Deed" means every instrument in writing, ~~except a last will~~
18 ~~and testament,~~ whatever its form ~~is~~ and by whatever name it is
19 known in law, by which title to any estate or present interest in real
20 property, including a water right, permit, certificate or application, is
21 conveyed or transferred to, and vested in, another person, ~~but~~
22 *except that the term* does not include ~~it~~ :

23 (1) *A lease for any term of years* ~~is, an easement, a~~ ;

24 (2) *An easement;*

25 (3) *A deed of trust or common-law mortgage instrument that*
26 *encumbers real property* ~~is, a~~ ;

27 (4) *A last will and testament;*

28 (5) *A distribution of the separate property of a decedent*
29 *pursuant chapter 134 of NRS;*

30 (6) *An affidavit of a surviving tenant* ~~for a~~ ;

31 (7) *A conveyance of a right-of-way* ~~is~~ ; or

32 (8) *A conveyance of an interest in gas, oil or minerals.*

33 (c) "Escrow" means the delivery of a deed by the seller into the
34 hands of a third person, including an attorney, title company, real
35 estate broker or other person engaged in the business of
36 administering escrows for compensation, to be held by the third
37 person until the happening of a contingency or performance of a
38 condition, and then to be delivered by the third person to the buyer.

39 (d) "Seller" means a person or other legal entity transferring title
40 to any estate or present interest in real property in this State by deed,
41 including, without limitation, a grantor or other transferor of real
42 property.

43 (e) "Value" means:

44 (1) In the case of any deed *which is* not a gift, the amount of
45 the full purchase price paid or to be paid for the real property.



(2) In the case of a gift, or any deed with nominal consideration or without stated consideration, the estimated fair market value of the property.

2. As used in paragraph (e) of subsection 1, "estimated fair market value" means the estimated price the real property would bring on the open market in a sale between a willing buyer and a willing seller. Such price may be derived from the assessor's taxable value or the prior purchase price, if the prior purchase was within the 5 years immediately preceding the date of valuation, whichever is higher.

Sec. 3. NRS 375.023 is hereby amended to read as follows:

375.023 1. In addition to all other taxes imposed on transfers of real property, a tax, at the rate of \$1.30 on each \$500 of value or fraction thereof, is hereby imposed on each deed by which any lands, tenements or other realty is granted, assigned, transferred or otherwise conveyed to, or vested in, another person, if the consideration or value of the interest or property conveyed exceeds \$100.

2. The amount of the tax must be computed on the basis of the value of the transferred property as declared pursuant to NRS 375.060.

3. The county recorder of each county shall collect the tax in the manner provided in NRS 375.030, except that the amount collected must be transmitted to the State Controller for deposit in the State General Fund within 30 days after the end of the calendar quarter during which the tax was collected.

4. The county recorder of ~~a county:~~
~~—(a) Whose population is 100,000 or more may deduct and withhold from the taxes collected 0.2 percent of those taxes to reimburse the county for the cost of collecting the tax.~~
~~—(b) Whose population is less than 100,000}~~ **each county** may deduct and withhold from the taxes collected 1 percent of those taxes to reimburse the county for the cost of collecting the tax.

Sec. 4. NRS 375.060 is hereby amended to read as follows:

375.060 1. Each deed evidencing a transfer of title of real property that is presented for recordation to the county recorder must be accompanied by a declaration of value made on a form prescribed by the Nevada Tax Commission.

2. *A county recorder shall not charge or collect any fees for recording the declaration of value required pursuant to this section.*

Sec. 5. NRS 375.090 is hereby amended to read as follows:

375.090 The taxes imposed by NRS 375.020, 375.023 and 375.026 do not apply to:



1 1. A mere change in identity, form or place of organization,
2 such as a transfer between a corporation and its parent corporation, a
3 subsidiary or an affiliated corporation if the affiliated corporation
4 has identical common ownership.

5 2. A transfer of title to the United States, any territory or state
6 or any agency, department, instrumentality or political subdivision
7 thereof.

8 3. A transfer of title recognizing the true status of ownership of
9 the real property.

10 4. A transfer of title without consideration from one joint
11 tenant or tenant in common to one or more remaining joint tenants
12 or tenants in common.

13 5. *A transfer, assignment or other conveyance of real*
14 *property if the owner of the property is related to the person to*
15 *whom it is conveyed within the first degree of lineal consanguinity*
16 *or affinity.*

17 6. A transfer of title between ~~{spouses, including gifts, or to~~
18 ~~effect a property settlement agreement or between}~~ former spouses
19 in compliance with a decree of divorce.

20 ~~{6-}~~ 7. A transfer of title to or from a trust without
21 consideration if a certificate of trust is presented at the time of
22 transfer.

23 ~~{7-}~~ 8. Transfers, assignments or conveyances of unpatented
24 mines or mining claims.

25 ~~{8-}~~ 9. A transfer, assignment or other conveyance of real
26 property to a corporation or other business organization if the person
27 conveying the property owns 100 percent of the corporation or
28 organization to which the conveyance is made.

29 ~~{9- A transfer, assignment or other conveyance of real property~~
30 ~~if the owner of the property is related to the person to whom it is~~
31 ~~conveyed within the first degree of consanguinity.}~~

32 10. The making, delivery or filing of conveyances of real
33 property to make effective any plan of reorganization or adjustment:

34 (a) Confirmed under the Bankruptcy Act, as amended, 11 U.S.C.
35 §§ 101 et seq.;

36 (b) Approved in an equity receivership proceeding involving a
37 railroad, as defined in the Bankruptcy Act; or

38 (c) Approved in an equity receivership proceeding involving a
39 corporation, as defined in the Bankruptcy Act,

40 ➔ if the making, delivery or filing of instruments of transfer or
41 conveyance occurs within 5 years after the date of the confirmation,
42 approval or change.

43 11. The making or delivery of conveyances of real property to
44 make effective any order of the Securities and Exchange
45 Commission if:



(a) The order of the Securities and Exchange Commission in obedience to which the transfer or conveyance is made recites that the transfer or conveyance is necessary or appropriate to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79k;

(b) The order specifies and itemizes the property which is ordered to be transferred or conveyed; and

(c) The transfer or conveyance is made in obedience to the order.

12. A transfer to an educational foundation. As used in this subsection, "educational foundation" has the meaning ascribed to it in subsection 3 of NRS 388.750.

13. A transfer to a university foundation. As used in this subsection, "university foundation" has the meaning ascribed to it in subsection 3 of NRS 396.405.

Sec. 6. NRS 247.305 is hereby amended to read as follows:

247.305 1. If another statute specifies the fee to be charged for a service, county recorders shall charge and collect only the fee specified. Otherwise, *unless prohibited by NRS 375.060*, county recorders shall charge and collect the following fees:

For recording any document, for the first page	\$10
For each additional page	1
For recording each portion of a document which must be separately indexed, after the first indexing.....	3
For copying any record, for each page	1
For certifying, including certificate and seal.....	4
For a certified copy of a certificate of marriage	10
For a certified abstract of a certificate of marriage	10

2. Except as otherwise provided in this subsection ~~H~~ and *NRS 375.060*, a county recorder may charge and collect, in addition to any fee that a county recorder is otherwise authorized to charge and collect, an additional fee not to exceed \$3 for recording a document, instrument, paper, notice, deed, conveyance, map, chart, survey or any other writing. A county recorder may not charge the additional fee authorized in this subsection for recording the originally signed copy of a certificate of marriage described in NRS 122.120. On or before the fifth day of each month, the county recorder shall pay ~~to the county treasurer~~ the amount of fees collected by him pursuant to this subsection *to the county treasurer* for credit to the account established pursuant to NRS 247.306.

3. Except as otherwise provided in this subsection ~~H~~ and *NRS 375.060*, a county recorder shall charge and collect, in addition to



1 any fee that a county recorder is otherwise authorized to charge and
2 collect, an additional fee of \$1 for recording a document,
3 instrument, paper, notice, deed, conveyance, map, chart, survey or
4 any other writing. A county recorder shall not charge the additional
5 fee authorized in this subsection for recording the originally signed
6 copy of a certificate of marriage described in NRS 122.120. On or
7 before the fifth day of each month, the county recorder shall pay ~~to~~
8 ~~the county treasurer~~ the amount of fees collected by him pursuant
9 to this subsection ~~to~~ *to the county treasurer*. On or before the 15th
10 day of each month, the county treasurer shall remit the money
11 received by him pursuant to this subsection to the State Treasurer
12 for credit to the Account to Assist Persons Formerly in Foster Care
13 established pursuant to NRS 423.137.

14 4. Except as otherwise provided in this subsection, subsection
15 5 or by specific statute, a county recorder shall charge and collect, in
16 addition to any fee that a county recorder is otherwise authorized to
17 charge and collect, an additional fee of \$25 for recording any
18 document that does not meet the standards set forth in subsection 3
19 of NRS 247.110. A county recorder shall not charge the additional
20 fee authorized by this subsection for recording a document that is
21 exempt from the provisions of subsection 3 of NRS 247.110.

22 5. Except as otherwise provided in subsection 6, a county
23 recorder shall not charge or collect any fees for any of the services
24 specified in this section when rendered by him to:

25 (a) The county in which his office is located.

26 (b) The State of Nevada or any city or town within the county in
27 which his office is located, if the document being recorded:

28 (1) Conveys to the State, or to that city or town, an interest in
29 land;

30 (2) Is a mortgage or deed of trust upon lands within the
31 county which names the State or that city or town as beneficiary;

32 (3) Imposes a lien in favor of the State or that city or town;
33 or

34 (4) Is a notice of the pendency of an action by the State or
35 that city or town.

36 6. A county recorder shall charge and collect the fees specified
37 in this section for copying ~~to~~ any document at the request of the
38 State of Nevada, and any city or town within the county. For
39 copying, and for his certificate and seal upon the copy, the county
40 recorder shall charge the regular fee.

41 7. For *the* purposes of this section, "State of Nevada,"
42 "county," "city" and "town" include any department or agency
43 thereof and any officer thereof in his official capacity.

44 8. Except as otherwise provided in subsection 2 or 3 or by an
45 ordinance adopted pursuant to the provisions of NRS 244.207,



1 county recorders shall, on or before the fifth working day of each
2 month, account for and pay to the county treasurer all such fees
3 collected during the preceding month.

4 **Sec. 7.** NRS 252.160 is hereby amended to read as follows:

5 252.160 ~~The~~

6 *1. Except as otherwise provided in this section, the* district
7 attorney shall, without fees, give his legal opinion to any assessor,
8 collector, auditor or county treasurer, and to all other county,
9 township or district officers within his county, in any matter relating
10 to the duties of their respective offices.

11 *2. The district attorney is not required to give his legal*
12 *opinion on any question regarding which he requests an opinion*
13 *from the Attorney General pursuant to section 1 of this act.*

14 **Sec. 8.** This act becomes effective on July 1, 2005.



