

Don Davis
Judge of Probate
Joe McEarchern, Jr.
Chief Clerk/Administrator



Judicial Division - (251) 574-6001
Recording Division - (251) 574-6040
Records Division - (251) 574-6070
Elections Division - (251) 574-6080
Accounts Division - (251) 574-6101
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PROBATE COURT OF MOBILE COUNTY, ALABAMA

MEMORANDUM

TO: ALL MOBILE LAWYERS AND TITLE INSURANCE COMPANIES

FROM: DON DAVIS

RE: IMPLEMENTATION OF ALA. ACT 2012-494
(BECOMES EFFECTIVE ON AUGUST 1, 2012)

DATE: JULY 20, 2012

Friends

The Alabama Legislature adopted *Ala. Act 2012-494* ("Act"). A copy of the Act is attached for your information and review. If you prepare deeds, mortgages and/or bills of sale, or if you record documents relating to the transfer of real and/or personal property in any Alabama probate court, you need to immediately familiarize yourself with the Act because it becomes **EFFECTIVE ON AUGUST 1, 2012**.

The Act requires that a person presenting a deed, bill of sale or other instrument conveying any interest in real or personal property within the State of Alabama to present proof of the actual purchase price of the property or actual value of the property at the time of the recording of the instrument(s) reflecting the conveyance. Further, the Act provides that if such proof is not presented, Alabama probate courts are to: (1) compute the tax on the matter based upon the assessed value of the property according to existing public records, AND (2) assess a penalty for failure to comply with the new statute (\$100.00 or 25 percent of the tax actually due, *whichever is greater*).

The Act also directs the Alabama Department of Revenue to develop a form that can be utilized by parties to attest to the actual value or actual purchase price of the subject property. It is not clear at this point in time as to whether the compliance with the Act can be achieved by stating the actual consideration amount in the instrument. It appears that use of the Alabama Department of Revenue's form will act like a "safe-harbor" in regards to the transaction. The Alabama Department of Revenue has NOT officially issued this form. However, we have obtained a copy of the draft of the form, which is attached for your information and review. The Alabama Department of Revenue has advised us that they expect to have the final version of the form to all Alabama probate courts on August 1, 2012.

Memorandum Concerning Implementation of

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Alabama probate courts are now being required to maintain records to be able to substantiate the amount of tax being assessed in these types of transactions. Accordingly, in Mobile County we intend to record any submitted valuation form with the transfer document. Please note this when computing the amount of tax to be remitted to the Court. Effective August 1, 2012, the Mobile County Probate Court will return unfiled, documents where the parties have not complied with the Act or have submitted the incorrect tax amount.

This is a new development in Alabama law that is becoming effective sooner, than later. While there may be other questions relating to implementation that have to be addressed and we don't have a final approved form from the Alabama Department of Revenue, we felt that we should proceed to notify all interested persons and parties of this new statute and the related requirements in hope of minimizing problems associated with the implementation of the Act. **This memorandum should not be considered the offering of legal advice. Should a person reading this memorandum have a question concerning the Act, they should consult legal counsel.** If there are any questions concerning the procedures the Mobile County Probate Court will be utilizing in regards to implementation of the Act, please do not hesitate to contact Margaret Templeton in the Court's Recording Division [574-6043 or margaret.templeton@probate.mobilecountyal.gov]. Thank you for your attention to this matter.



Don Davis

Attachments

SB216

ENROLLED, An Act,

To amend Section 40-22-1, Code of Alabama 1975, to require that a person presenting a deed, bill of sale, or other instrument conveying any real or personal property within this state or any interest in any such property to the judge of probate for recording shall present proof of the actual purchase price of property or actual value of the property, and that if such proof is not presented, the privilege or license tax will be based upon the assessed value of the property and the person failing to submit the required proof shall be subject to monetary penalties for failure to comply with the law.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-22-1, Code of Alabama 1975, is amended to read as follows:

"§40-22-1.

"(a) Except as set out in subsection (b), no deed, bill of sale, or other instrument of like character which conveys any real or personal property within this state or which conveys any interest in any such property shall be received for record unless the privilege or license tax is

1 paid prior to the instrument being offered for record as
2 provided in subsection (c).

3 "(b) No privilege or license tax shall be required
4 for any of the following:

5 "(1) The transfer of mortgages on real or personal
6 property within this state upon which the mortgage tax has
7 been paid.

8 "(2) Deeds or instruments executed for a nominal
9 consideration for the purpose of perfecting the title to real
10 estate.

11 "(3) The re-recording of corrected mortgages,
12 deeds, or instruments executed for the purpose of perfecting
13 the title to real or personal property, specifically, but not
14 limited to, corrections of maturity dates thereof, and deeds
15 and other instruments or conveyances, executed prior to
16 October 1, 1923.

17 "(c) Except as provided in subsection (b), the
18 privilege or license tax on all instruments which are executed
19 to convey real or personal property situated in this state of
20 the value of \$500 or less shall be \$.50, and upon all such
21 instruments executed to convey real or personal property
22 situated in this state of more than \$500 in value there shall
23 be paid the sum of \$.50 for each \$500 or fraction thereof in
24 value of property conveyed by such instrument; provided, that
25 only the value in excess of any mortgages or vendor's lien

1 upon any property within this state on which the mortgage tax
2 has been paid shall be taxable under this section; and
3 provided further, that where several deeds or instruments are
4 executed by tenants in common for the same consideration, only
5 one of such instruments shall be taxable under this section.
6 Except for instruments which convey only leaseholds easements,
7 or licenses or the recordation of copies of instruments
8 evidencing original transfers of title to land by the United
9 States or the State of Alabama, any instrument presented for
10 record pursuant to this section shall be accompanied by proof
11 of the actual purchase price paid for the property or if the
12 property has not been sold, proof of the actual value of the
13 real or personal property which is the subject of the
14 instrument being recorded. The Department of Revenue shall
15 develop a form which shall be used for attesting to the actual
16 value or actual purchase price of the property, which form
17 shall include only information related to the actual value or
18 actual purchase price of the property. Any person utilizing
19 the form developed by the department pursuant to this section
20 shall attest to the accuracy of the information being provided
21 on the form, but shall not be required to provide any further
22 documentation or proof of the actual purchase price or actual
23 value of the property.

24 "(d) Upon the presentation of any instrument for
25 record, the judge of probate shall calculate the amount of tax

1 due based upon the actual purchase price paid or the actual
2 value of the property as required in subsection (c). If no
3 proof is provided at the time the instrument is presented for
4 recording, the amount of the tax due shall be based upon the
5 value of the property as determined by the most recent
6 assessment of property conducted pursuant to Title 40, Chapter
7, and the judge of probate shall assess penalties as set out
8 in subsection (h) to be paid in addition to the tax due.

9 "(e) The instrument shall be recorded upon the
10 payment of the amount of such tax and recording fee, and where
11 assessed, any penalties as set out in subsection (h);
12 provided, however, that upon the presentation for record of
13 any instrument which conveys property situated in two or more
14 counties of this state, the judge of probate shall so certify
15 receipt of the instrument together with a description of the
16 property conveyed by the instrument to the Department of
17 Revenue, which after hearing evidence as may be offered or as
18 it may secure, shall fix and determine the value of the
19 property as located in each county and shall certify its
20 determination thereof to the judge of probate, showing the
21 value of the property in each county separately; and, upon the
22 payment to the judge of probate of the tax due on the value of
23 all property in this state conveyed by the instrument as so
24 determined, the judge of probate shall accept the instrument
25 for record. The person presenting any instrument conveying

1 property in two or more counties of this state may secure
2 immediate filing of the instrument for record by depositing
3 with the judge of probate an amount which in the judgment of
4 the judge of probate will cover the tax herein provided for,
5 and after the value of the property conveyed thereby is
6 determined by the Department of Revenue, as provided herein,
7 any excess of the deposit over the amount of tax found to be
8 due on the instrument shall be refunded to the person offering
9 the instrument for record. The determination by the judge of
10 probate and of the Department of Revenue of the amount of tax
11 due on any instrument is hereby declared to be a ministerial
12 act and shall not preclude the subsequent collection of the
13 correct amount of tax if the value of the property thereby
14 conveyed is not fully disclosed to the judge of probate or the
15 Department of Revenue when the instrument is offered for
16 record. Upon the filing for record of any instrument coming
17 within the terms of this section, the judge of probate shall
18 certify thereon the fact that the tax has been paid, showing
19 the amount of the tax, and thereafter the instrument shall be
20 received for record in any county of this state without the
21 payment of any further tax, except the fee of the judge of
22 probate for recording such instrument, which certificate shall
23 be recorded with and as part of the instrument.

24 "(f) Upon the filing for record of any instrument
25 which has been exempted by law from the payment of the tax

1 provided for in this section, the judge of probate shall
2 certify thereon that no tax has been paid and shall stamp in
3 bold letters on the face of said instruments the words "No Tax
4 Collected," and said certificate shall be recorded with and as
5 a part of the instrument, and thereafter such instrument shall
6 be received for record in any county in this state without the
7 payment of any further tax, when submitted by the same tax
8 exempt institution or another tax exempt institution, but if
9 submitted by or transferred to an institution or person not
10 exempt from the payment of the tax levied under this section,
11 the judge of probate shall collect the tax levied by this
12 section, together with the fee of the judge of probate for
13 recording such instrument, before it will be admitted to
14 record.

15 "(g) Of the tax collected by the judge of probate
16 under the provisions of this section, there shall be paid into
17 the State Treasury two thirds of the amount so collected, and
18 the remaining one third shall be paid into the county
19 treasury; provided, that the counties' share of the tax
20 collected on any instrument conveying property in more than
21 one county shall be paid into the county treasuries of the
22 counties in which such property is situated in proportion to
23 the value of such property as determined by the Department of
24 Revenue as herein provided. If the judge of probate is paid on
25 fees and commissions, he or she shall receive two and one-half

1 percent of the amount collected under the provisions of this
2 section as his or her commission for collecting the money,
3 which shall be deducted from the total amount collected and
4 retained by him or her when making settlement of his or her
5 collections as required by law; provided, that this section
6 shall not be so construed or enforced as to require the
7 payment of privilege tax herein provided on mortgages, deeds
8 of trust, or other instruments in the nature of a mortgage or
9 deeds or other instruments with a vendor's lien except as to
10 that part of the purchase price which is paid in cash or other
11 articles of value and which pay no other privilege tax for
12 recording. In counties where the probate judges are paid
13 salaries, the fee or commission collected or retained for
14 collecting the tax herein provided for shall be paid into the
15 treasuries of their respective counties.

16 " (h) Any person who submits an instrument for
17 recording pursuant to this section and intentionally fails to
18 submit proof of the value of the property or the actual
19 purchase price paid for the property as required in subsection
20 (c) following a specific request for such proof from the
21 probate office or who presents false proof of same, in
22 addition to payment of the tax due as calculated on the actual
23 value of the property, shall pay a penalty of one hundred
24 dollars (\$100) or 25 percent of the privilege or license tax
25 actually due, whichever is greater. No person submitting the

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1 form required under subsection (c) above shall be deemed to
2 have presented false proof or be otherwise subject to
3 liability where such form was submitted and attested to in
4 good faith.

5 "(i) No failure or falsity of proof of the actual
6 purchase price or value shall in any way affect the instrument
7 recordation or the notice provided by such recorded."

8 Section 2. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.

SB216

Ray Ivey

President and Presiding Officer of the Senate

[Signature]

Speaker of the House of Representatives

SB216

Senate 12-APR-12

I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 16-MAY-12

By: Senator Irons

APPROVED May 22, 2012
TIME 7:35 am
Robert Bentley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2012-494
Bill Num....: S-216
Rec'd 05/22/12 03:50pmSLF

Real Estate Sales Validation Questionnaire

This Document must be filed in accordance with Code of Alabama 1975, Section 40-22-1

Grantor's Name _____
Mailing Address _____

Grantee's Name _____
Mailing Address _____

Property Address _____

Date of Sale _____
Total Purchase Price \$ _____
or
Current Assessor's MV \$ _____

Documentary Evidence provided:

____ Closing Statement
____ Bill of Sale
____ Sells Contract
____ Other _____

Affidavit of Exception

Mark the appropriate situation upon which an exception is based.

When transfer of title to real estate or affidavit of equitable interest in real estate is made:

- ☐ Transfer of mortgage on real or personal property within this state upon which the mortgage tax has been paid.
- ☐ Deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate.
- ☐ Re-recording of corrected mortgage, deed, or instrument executed for the purpose of perfecting the title to real estate or personal property, specifically, but not limited to, corrections of maturity dates thereof, and deeds and other instruments or conveyances, executed prior to October 1, 1923.
- ☐ Instrument conveying only leasehold easement, or licenses or the recording of copies of instruments evidencing original transfers of title to land by the United States or the State of Alabama.

I hereby affirm that to the best of my knowledge and belief the information contained in this document is true and complete.

Date _____

Print _____
Sign _____

(Owner / Agent) circle one