



# Recordation Tax Manual

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# Recordation Tax

## Overview

Recordation refers to the legal procedure whereby an individual formally establishes the right to an interest in real property or priority as a creditor under a debt instrument. The “Recordation Tax” is imposed in Tennessee under Tenn. Code Ann. § 67-4-409, which consists of two separate taxes:

- Realty transfer tax on the privilege of publicly recording documents related to the transfer of real property; and
- Indebtedness tax on the privilege of publicly recording debt instruments.

## Realty Transfer Tax

Tennessee imposes a tax of \$0.37 per \$100 for the privilege of publicly recording documents evidencing all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate. This tax is generally based on the greater of consideration paid or the value of the property.

### 1. Calculating Realty Transfer Tax

#### *Freehold Estates*

The tax base for a freehold estate is the greater of:

- The consideration for the transfer; or
- The value of the property at the time of transfer.

The value of the property is the amount that the property transferred would command at a fair and voluntary sale.<sup>1</sup> When a deed is presented at a much later date for recordation, the current fair market value of the property should be used.

This can be contrasted to the process used with foreclosures, auctions, and familial transactions.

### *Quitclaim Deeds*

A quitclaim deed contains no title covenants and offers no warranty as to the status of the property title. The tax base for a quitclaim deed is the consideration given.<sup>2</sup> A deed is treated as a quitclaim deed if the deed contains language substantially similar to the form for quitclaim deeds in Tenn. Code Ann. § 66-5-103(2), and only conveys the grantor's *interest* to the grantee.<sup>3</sup> For example, a true quitclaim deed may state:

- "I hereby quitclaim to Grantee all my interest in the following land."
- "I hereby remise, release and quitclaim unto the said Grantee forever, all the right, title, interest and claim which the said Grantor has in and to the following described parcel of land, and improvements and appurtenances thereto."
- "I hereby bargain, sell, release, remise, quit claim, and convey unto Grantee all my right, title, and interest in and to the following real estate."

Deeds that do not clearly convey the grantor's *interest* in the real property generally do not qualify as a true quitclaim deed. Tax is due on the fair market value of the property when the language in the deed shows intent to convey the property itself ("in fee") including warranty, evidenced by language substantially similar to the form provided in Tenn. Code Ann. § 66-5-103(1)(A), rather than a mere chance of title. Examples of such language include, but are not limited to:

- "to have and to hold" (habendum clause)
- "in fee simple" (absolute)
- "I warrant the title against all persons whomsoever"
- "I hereby grant, devise, bargain, sell, and convey by quitclaim unto Grantee the following premises"

- Although this language is substantially similar to the quit claim deed language, it does not state that the grantor is only conveying his or her *interest* in the real property.

### *Warranty Deeds (Including Retained Life Estate)*

The recordation tax on the transfer of a warranty deed with a retained life estate is based on the fair market value of the property less the value of the life estate. The preparer of the deed is responsible for calculating the value of the life estate. The valuation must reflect the fair market value of the property, life estate, and remainder interest.

The following two alternatives may be used by preparers in calculating the value of the life estate.

#### **Alternative 1**

The preparer may use the tables referenced in TENN. COMP. R. & REGS. 1320-4-9-.01 (1983), which have been reproduced as Table VIII-A and VIII-B in Tennessee Code Annotated Volume 13 (Supp. 2017).

Multiply the life estate factor that applies to the life estate holder by the fair market value of the property being transferred to determine the life estate value. When the value of the life estate has been determined that amount should be subtracted from the fair market value of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

For example, in September 2018, a father, age 70, transfers property valued at \$250,000 to his daughter, but he retains a life estate in the property.

- Applicable interest rate per Table VIII-A is 6%
- Life estate factor for a male aged 70 is .41294

<b>FMV of property</b>	\$250,000
<b>Life estate factor</b>	x .41294
<b>Life estate value</b>	\$103,235

<b>FMV of property</b>	\$250,000
<b>Life estate value</b>	- 103,235
<b>Recordation tax base</b>	\$146,765
<b>Recordation tax base</b>	\$146,765
<b>Recordation tax rate</b>	x .0037
<b>Recordation tax due</b>	\$543.03

### ***Alternative 2***

The preparer may use the IRS Actuarial Computation Tables (select Section 1, Table S under Publication 1457). The actuarial factors used must be based on an interest rate that is equal to 120% of the midterm applicable federal rate for the month of valuation rounded to two-tenths of a percent (the applicable interest rate is provided [here](#)).

Multiply the life estate factor that applies to the life estate holder by the fair market value of the property being transferred to determine the life estate value. Once the value of the life estate has been determined that amount should be subtracted from the fair market value of the property. Recordation tax is owed on that amount. The preparer of the deed must show the calculation of the life estate when filing the deed.

For example, in September 2018, a father, age 70, transfers property valued at \$250,000 to his daughter, but he retains a life estate in the property.

- Applicable interest rate for September 2018 is 3.4%
- Life estate factor at the 3.4% interest rate for a person aged 70 is .35876

<b>FMV of property</b>	\$250,000
<b>Life estate factor</b>	x .35876
<b>Life estate value</b>	\$89,690
<b>FMV of property</b>	\$250,000
<b>Life estate value</b>	- 89,690

<b>Recordation tax base</b>	\$160,310
<b>Recordation tax base</b>	\$160,310
<b>Recordation tax rate</b>	x .0037
<b>Recordation tax due</b>	\$593.15

## 2. Transfers Not Subject to Tax

The realty transfer tax is not levied on the following:

- The transfer of a leasehold estate<sup>4</sup>
- The transfer of any real estate resulting from the creation or dissolution of a tenancy by the entirety:
  - By a conveyance by one spouse to the other,<sup>5</sup>
  - By a conveyance from one spouse or both spouses to the original grantor in the instrument and the original grantor's spouse,<sup>6</sup> or
  - By a conveyance of one spouse or both spouses to a trustee and immediate conveyance by the trustee in the same instrument as tenants in common, or the like<sup>7</sup>
- The transfer of real estate formerly held by tenants in common<sup>8</sup>
- The transfer of real estate resulting from the release of a life estate to the beneficiaries of the remainder interest<sup>9</sup>
- The transfer of real estate involving deeds executed by an executor to implement a testamentary devise<sup>10</sup>
- The transfer of real estate involving domestic settlement decrees, domestic decrees, or deeds that are an adjustment of property rights between divorcing parties<sup>11</sup>

- The transfer of real estate by a transferor of real estate to a revocable living trust created by the same transferor or by a spouse of the transferor, or transfers by the trustee of a revocable living trust back to the same transferor or the transferor's spouse<sup>12</sup>
- The transfer of real estate where deeds are executed by a trustee of a revocable living trust implementing a testamentary devise by the trustor of the trust<sup>13</sup>
- Transfers of real estate where the deeds are executed by a trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries<sup>14</sup>

**⚠ An oath is not required on a tax-exempt transfer.**

### 3. Payment and Collection

#### *Who pays the tax?*

The grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest, is responsible for paying realty transfer tax.

#### *Where is the tax paid?*

Recordation tax should be collected by the register of the county where the instrument is offered for recordation.<sup>15</sup>

To prove recordation tax has been paid in another jurisdiction, an individual should provide the name of the jurisdiction where the tax was paid, along with the book and page where the document was recorded.



## 4. Administration

### *Recordation Requirement*

The grantee or trustee must state under oath upon the face of the instrument offered for record in the presence of the register the actual consideration or value, whichever is greater, for the transfer of a freehold estate.

### *Penalties*

#### **False statements**

False statements that are known to be false respecting the consideration for value of property transferred shall be punishable as perjury.<sup>16</sup>

### *Multiple Deeds or Other Instruments of Conveyance*

A person who obtains several deeds or other instruments of conveyance for the same transfer of one and the same tract or parcel of real estate shall pay tax only one time with respect to such transfer.<sup>17</sup> No tax is due until the title to the property is transferred by deed.<sup>18</sup>

### *Realty Transfer Tax Discovery Program Procedures*

Deeds from various counties in Tennessee already registered at the county level for a transfer of property are reviewed on occasion. Leads sent to the Department of Revenue are also reviewed under the same rules.

- A county and date range are selected at random.
- Each deed in that date range (WD, TD, QC) is reviewed and the value claimed under oath on the deed is compared to the Tax Assessor value given on the comptroller of the treasury website.
- If there are discrepancies between the deed and the Tax Assessor value, the Department may issue an inquiry letter to the owner listed on the deed.

## Indebtedness Tax

Prior to the public recordation of any instrument evidencing an indebtedness, including, but not limited to, mortgages, deeds of trust, conditional sales contracts, financing statements contemplated in the Uniform Commercial Code, compiled in title 47, and liens on personalty, other than on motor vehicles, a tax on this indebtedness should be paid.<sup>19</sup> Indebtedness tax is for state purposes only, and the tax is equivalent to 11.5¢ on each \$100 of the indebtedness so evidenced. However, it does not apply with respect to the first \$2,000 of the indebtedness.

### 1. Specific Sum of Money

Indebtedness is the principal debt or obligation which is reasonably contemplated by the parties to be included within the terms of the agreement. Indebtedness does not include: any amount of interest, collection expense including, but not limited to, attorney's fees and expenses incurred in preserving, protecting, improving, or insuring property which serves as collateral for indebtedness, or any other amount, other than the principal, for which a debtor becomes liable unless such amount is added to the principal debt.<sup>20</sup>

Every recorded instrument evidencing an indebtedness **must** contain the following required statement. This statement can be on the face of the instrument or in an attached sworn statement.<sup>21</sup>

- "Maximum principal indebtedness for Tennessee Recording tax purposes is \$\_\_\_."

### 2. Non-Specific Sum of Money

If the instrument is given to secure the performance of an obligation *other than the payment of a specific sum* of money, and a maximum amount secured is not expressed in the instrument, such instrument shall be taxable upon *the value of the property covered by the instrument*.<sup>22</sup>

The instrument must contain on its face or in an attached sworn statement the following:

- "Secures obligation other than payment of specific sum – valuation statement

submitted herewith.”<sup>23</sup>

### 3. Revolving Line of Credit

For instruments securing a line of credit of varying amounts, the indebtedness tax shall be based on *the maximum amount of indebtedness* as stated in the instrument, and the reduction or subsequent increasing of the amount of the indebtedness within such limits will **NOT** result in an additional tax.<sup>24</sup>

### 4. Indebtedness Increase Beyond Previously Stated Maximum

Additional indebtedness tax is due on an increase in indebtedness, but only on the increase. The mortgagor should provide the book and page where the prior document was filed. Please note that the entire amount of the increase is subject to tax. A taxpayer cannot exclude the first \$2,000 of the increase in indebtedness as it may when paying the tax under the initial filing.

### 5. UCC Fixture Filings

Generally, Uniform Commercial Code ("UCC") fixture filings are subject to indebtedness tax. However, they are not subject to the tax if the incidence of tax is on an entity that is exempt from the tax or if a governmental entity is the mortgagor (lender) or the mortgagee (debtor). If the filer claims the document is exempt, the proper statute citation must be included on the document. UCC fixture filings always require a value to be stated as maximum principal indebtedness. The value cannot be \$0.

### 6. Assumption Agreements

There are two types of assumption agreements. The most common type is an arrangement where the purchaser promises to pay the debt of the seller, but the seller remains liable on the debt in the case of default. Indebtedness tax is not due on this type of assumption agreement, as there is no new debt, only a continuation of the existing debt.

The other type of assumption agreement is one whereby the purchaser enters into a new contract with the mortgagee, changing the terms of the mortgage and canceling the seller's

obligation. Indebtedness tax is due on this type of assumption agreement because a new indebtedness is created. Under this type of agreement, tax is due on the new mortgage.

## 7. Debt Instruments Not Subject to Tax

The indebtedness tax is not required for the recordation of:

- Judgment liens
- Contractors' liens
- Subcontractors' liens
- Furnishers' liens
- Laborers' liens
- Mechanics' and materialmen's liens
- Financing statements filed pursuant to the UCC, compiled in title 47, that secure an interest solely in investment property
- Mortgages or deeds of trust issued under the Home Equity Conversion Mortgage Act<sup>25</sup>

## 8. Payment and Collection

### *Who pays the tax?*

The mortgagor, grantor, or debtor, evidenced by the instrument offered for recordation, pays the tax. A holder of indebtedness must collect and remit the tax.

### *Where is the tax paid?*

This tax shall be paid to and collected by county registers, the secretary of state, and any other official who may receive any instrument for recordation.<sup>26</sup>

## 9. Debt Instrument Administration

An official charged with collection of the indebtedness tax is forbidden from recording any instrument evidencing indebtedness until the *required statement* is provided and the indebtedness tax is properly paid.<sup>27</sup>

*Property Securing Payment Located both Inside and Outside of Tennessee:*

$$\text{Taxable Indebtedness} = \frac{\text{Value of TN Collateral}}{\text{Value of Total Collateral}} = \text{___\%} \times \text{Indebtedness}$$

TENN. CODE ANN. § 67-4-409(b)(7)(A)(i)

### *Tennessee Collateral*

All collateral in which a security interest, deed of trust, mortgage lien or other consensual lien is perfected by filing or recording one or more instruments in the state of Tennessee.

Tennessee collateral does NOT include:

- Any personal property physically located outside the state of Tennessee;
- Any property in which a security interest could be perfected by possession;
- Mobile Goods: goods that are mobile and are normally used in more than one jurisdiction, unless the debtor's chief executive office is also located in Tennessee<sup>28</sup>

If there is an increase in indebtedness beyond amount stated subsequent to the filing or recordation of the instrument, the holder shall pay the indebtedness tax on the amount of the increase.

### *Payment*

Payment is due on the date the increase occurs but may be made without penalty within

60 days after the increase.<sup>29</sup>

### *Penalty*

If the holder of the indebtedness fails to pay or underpays the indebtedness tax, the holder must pay a penalty of \$250 or double the unpaid Debt Instruments Tax, whichever is greater.<sup>30</sup>

**⚠ If a debt instrument inquiry/audit is discovered, it is treated the same as a realty individual discovery item. This would be a rare occurrence due to the 200% penalty incurred for failure to pay.**

## **Miscellaneous**

The realty transfer tax and indebtedness tax are two separate taxes. An instrument evidencing a transfer of interest that is subject to the realty transfer tax is also subject to the indebtedness tax when such instrument evidences an indebtedness.<sup>31</sup>

### **1. Exemptions**

#### *Government Entities*

Government entities include government owned public utilities, farm credit services, or any political subdivision of the state, federal or local government. There is no recordation tax due on a transfer of property to or from a government entity or on any instrument evidencing an indebtedness in which a municipality is the holder or owner of the indebtedness.<sup>32</sup> This includes when a deed of trust is presented to a county clerk for recordation with an assignment to the Tennessee Housing Development Agency (“THDA”). The assignment to the THDA is exempt in accordance with Tenn. Code Ann. § 13-23-127(a), which states in pertinent part that “nor is the agency required to pay any transfer tax of any kind on account of instruments recorded by it or on its behalf.”

#### **Federal Government**

The constitutional doctrine of intergovernmental tax immunity prohibits taxes that

discriminate against the federal government or those dealing with the federal government. Therefore, deeds of trust presented to the county clerk for recordation with an assignment to the Federal Housing Administration (“FHA”) is exempt. The FHA is a United States government agency. This doctrine does not extend to Freddie Mac or Fannie Mae because those entities are private government sponsored entities, not government agencies.

### *Mergers, Consolidations, Sales, or Transfers of Assets of Corporations*

Instruments made pursuant to mergers, consolidations, sales, or transfers of substantially all the assets in this state of corporations, pursuant to plans of reorganization are exempt from indebtedness tax.

### *Health and Educational Facility Corporations*

Health and educational facility corporations are exempt from indebtedness tax when such corporations are formed pursuant to Tenn. Code Ann. § 48-101-3.

### *Credit Unions*

Credit unions are exempt from recordation tax if they are a grantee in a warranty deed or the grantor in a trust deed.<sup>33</sup>

## **2. Determining Fair Market Value**

The Department would accept as the fair market value of the property:

- The tax base that is listed in the local tax assessor’s office, or
- A recent appraisal that has been accepted by the assessor’s office when disputing the tax base.

Anything less is subject to audit by the Department and could be assessed, along with penalties and interest.

The fair market value used should be the fair market value of the property at the time that the property was actually transferred.

### **3. Collection and Reporting**

County Registers must report all collections to the Department on forms prescribed by the Commissioner.

County Registers are entitled to retain a 5% commission of the taxes collected. However, 52% of the 5% commission shall be remitted to the state treasurer and credited to the general fund of the state.

County Registers may charge a \$1 fee for issuing each receipt for the realty transfer tax and indebtedness tax.<sup>34</sup>

### **4. Modified or Amended Deeds**

A modified conveyance deed or deed of trust should contain at least the book and page of the previous document to ensure that the proper tax was previously paid when originally filed.



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- <sup>1</sup> Tenn. Code Ann. § 67-4-409(a)(1).
  - <sup>2</sup> Tenn. Code Ann. § 67-4-409(a)(4).
  - <sup>3</sup> Public Chapter 834 (2022).
  - <sup>4</sup> Tenn. Code Ann. § 67-4-409(a)(2).
  - <sup>5</sup> Tenn. Code Ann. § 67-4-409(a)(3)(A)(i).
  - <sup>6</sup> Tenn. Code Ann. § 67-4-409(a)(3)(A)(ii).
  - <sup>7</sup> Tenn. Code Ann. § 67-4-409(a)(3)(A)(iii).
  - <sup>8</sup> Tenn. Code Ann. § 67-4-409(a)(3)(B).
  - <sup>9</sup> Tenn. Code Ann. § 67-4-409(a)(3)(C).
  - <sup>10</sup> Tenn. Code Ann. § 67-4-409(a)(3)(D).
  - <sup>11</sup> Tenn. Code Ann. § 67-4-409(a)(3)(E).
  - <sup>12</sup> Tenn. Code Ann. § 67-4-409(a)(3)(F).
  - <sup>13</sup> Tenn. Code Ann. § 67-4-409(a)(3)(G).
  - <sup>14</sup> Tenn. Code Ann. § 67-4-409(a)(3)(H).
  - <sup>15</sup> Tenn. Code Ann. § 67-4-409(a)(6).
  - <sup>16</sup> Tenn. Code Ann. §§ 67-4-409(a)(6)(A) and (B).
  - <sup>17</sup> Tenn. Code Ann. § 67-4-409(a)(6)(C).
  - <sup>18</sup> Tenn. Code Ann. § 67-4-409(a)(7).
  - <sup>19</sup> Tenn. Code Ann. §§ 67-4-409(b) and 409(b)(4).
  - <sup>20</sup> Tenn. Code Ann. § 67-4-409(b)(5)(A).
  - <sup>21</sup> Tenn. Code Ann. § 67-4-409(b)(5)(C)(1).
  - <sup>22</sup> Tenn. Code Ann. § 67-4-409(b)(5)(B).
  - <sup>23</sup> Tenn. Code Ann. § 67-4-409(b)(5)(C)(ii).
  - <sup>24</sup> Tenn. Code Ann. § 67-4-409(b)(5)(D).
  - <sup>25</sup> Tenn. Code Ann. § 67-4-409(b)(1).
  - <sup>26</sup> Tenn. Code Ann. § 67-4-409(b)(3).
  - <sup>27</sup> Tenn. Code Ann. § 67-4-409(b)(5)(C)(iii).
  - <sup>28</sup> Tenn. Code Ann. § 67-4-409(b)(7).
  - <sup>29</sup> Tenn. Code Ann. § 67-4-409(b)(8).
  - <sup>30</sup> Tenn. Code Ann. § 67-4-409(b)(12).
  - <sup>31</sup> Tenn. Code Ann. § 67-4-409(b)(6).
  - <sup>32</sup> Tenn. Code Ann. §§ 67-4-409(e) and (f).
  - <sup>33</sup> Tenn. Code Ann. § 45-4-803. 12 U.S.C. § 1768.
  - <sup>34</sup> Tenn. Code Ann. § 67-4-409(d).