

OFFICE OF THE ATTORNEY GENERAL

91-00208



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STATE OF ALABAMA

MAR 2 1 1991

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Honorable Carol Robinson
Chief Clerk
P. O. Box 549
Chatom, Alabama 36518

Mortgage Tax -- Recordation of
Documents -- Judges of Probate --
Mortgages

Pursuant to §40-22-2(4), Code of Alabama 1975, mortgages presented for re-recording solely because the mortgagee seeks to use updated mortgage forms should not be subject to additional mortgage privilege tax, as the amounts of indebtedness are not being increased, the remaining balances are not being renewed, and the maturity dates are not being extended.

Dear Ms. Robinson:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Whether mortgage privilege tax should be assessed on two real estate mortgages dated December 5, 1990, and presented for recording solely because the mortgagee seeks to re-record those mortgages using updated forms.

FACTS AND ANALYSIS

The two mortgages in question were previously recorded in

the office of the Judge of Probate and the correct amounts of tax collected. The bank, as mortgagee, now seeks to record the same mortgages, which reflect no changes in the maturity dates or in the amounts of indebtedness. The reason given for the re-submission of the mortgages for re-recording is that the bank wishes to phase out its obsolete mortgage forms and use new updated forms that reflect current usage in the market place.

The mortgages in question were previously recorded, and the appropriate amounts of mortgage privilege tax were assessed and paid at that time. Section 40-22-2(4), Code of Alabama provides:

The privilege taxes herein imposed shall not be required on or for the filing of any such instrument, providing additional or substitute security for any indebtedness secured by, or the securing of which is evidenced by, an instrument previously filed, upon the filing of which the taxes provided by law have been paid or which was filed at a time when no such privilege taxes were required by law; provided, that the secured indebtedness remains unchanged in amount and in time of maturity.

The recently submitted updated mortgages show the same amounts of indebtedness, the mortgagee has indicated that there are no changes in the times of maturity, and there has been no addition or substitution of security.

CONCLUSION

In my opinion, the updated mortgages presented for re-recording should not be subject to additional mortgage privilege tax because the amounts of indebtedness are not being increased, the remaining balances are not being renewed, and the maturity dates are not being extended.

It is hoped that the above information sufficiently answers your question. Should there be any further questions or if this office can be of any further assistance, then please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By-


JAMES R. SOLOMON, JR.
Chief, Opinions Division