

March 9, 1993

TO: ALL COUNTY TAX COMMISSIONERS

RE: Collection of Intangible Recording Tax on Instruments  
Securing a Refinanced Note.

The purpose of this letter is to provide clarification on collecting the intangible recording tax from a lender who is party to a "refinancing" envisioned in O.C.G.A. 48-6-65 (b). The confusion focuses on the correct amount that should be collected on the security instrument being recorded in conjunction with the "refinanced" note. This letter should also serve to clarify any misrepresentations of letter advice provided to the Cobb County Tax Commissioner's Office, dated November 4, 1992, from the Georgia Attorney General's Office.

As interest rates have fallen over the past year, many Georgia homeowners have sought to "refinance" their home mortgages. A new note is signed and a new security instrument is filed in the local jurisdiction. However, some county tax commissioners offices have not been requiring payment of an intangible recording tax due to the fact that the security instrument reflects a "refinancing."

Georgia law does not impose a tax on "that part of the face amount of a new instrument securing a long-term note secured by real estate which represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate . . . "O.C.G.A. 48-6-65 (b). However, simply because the borrower is refinancing his mortgage does not mean that a "refinancing by the original lender" has occurred. In order to be exempt from payment of the intangible recording tax on that part of the face amount of the new instrument which represents a refinancing of the unpaid principal balance on the previous instrument, three conditions must be met:

1. The borrower must be the original borrower.
2. The lender must be the original lender.
3. The original lender must own the note being refinanced.

Condition number three has caused much confusion, due to the fact that many mortgages are sold on the secondary market within days after the loan is closed. A typical scenario is one where Lender 1 has sold a note on the secondary market to Lender 2, but Lender 1 still services the original note and acts as the agent for Lender 2. Borrower decides to refinance his mortgage and seeks a refinancing of the original note from Lender 1. If Lender 1 had still owned the original note, then a portion of the new security instrument, representing the refinancing of the previous instrument, would be exempt from the intangible

recording tax. However, in many situations, the note is sold on the secondary market. Thus, it would be impossible for Lender 1 to refinance the original note. Borrower may view the new loan as a "refinancing", but for purposes of O.C.G.A. 48-6-65 (b), a "refinancing by the original lender of unpaid principal on the previous instrument" has not occurred. The only lender that can be said to have refinanced a note is a lender who is the original lender involved in the first transaction.

Please feel free to contact me if you should have any questions regarding this issue.

Sincerely,

LARRY GRIGGERS

LG/lbm