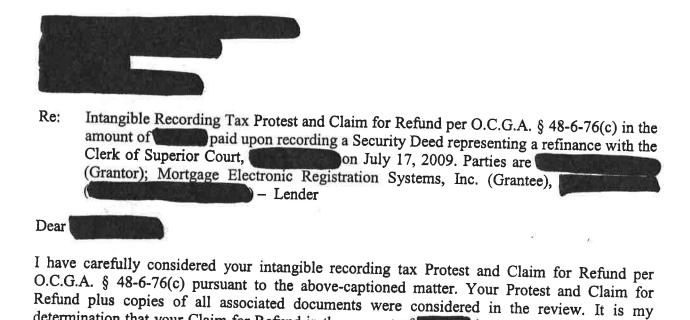


Bart L. Graham Commissioner

State of Georgia Department of Revenue

Suite 15300 1800 Century Boulevard Atlanta, Georgia 30345 (404) 417-2100

October 22, 2009



O.C.G.A. § 48-6-65 provides, in pertinent part, that no tax shall be collected on that part of the face amount of a new instrument securing a long-term note secured by real estate that represents a refinancing by the original lender of unpaid principal on a previous instrument securing a long-term note secured by real estate if all intangible recording tax due on the previous instrument has been paid or the previous instrument was exempt from intangible recording tax.

determination that your Claim for Refund in the amount of public upheld. The amount may

be refunded by the Clerk of Superior Court,

Ga. Comp. R. & Regs. r. 560-11-8-.05 provides, in pertinent part, that intangible recording tax is not required to be paid on that part of the face amount of a new instrument securing a long-term note which represents a refinancing between the original lender and original borrower of unpaid principal of an existing instrument, still owned by the original lender, if the intangible recording tax was paid on the original instrument or the original holder of the instrument was exempt.



Although Mortgage Electronic Registration Systems, Inc. (MERS) was shown as the "grantee" on the security instrument representing a refinance between the parties, they cannot be said to be the "lender." In the instant matter, that the instant matter, the has been the lender for both the original long-term security instrument, and the security instrument that represents a refinance. The requirement stated in O.C.G.A. § 48-6-65 and Department of Revenue Rule 560-11-8-.05 has been met. Further, given that all tax due on the amount of "new money" advanced was paid when the instrument was recorded under Protest, because all tax due had been paid when the original instrument was recorded on August 3, 2007, no further intangible recording tax was due on the existing principal balance.

A copy of this determination is being provided to the Clerk of Superior Court, so that the money collected and deposited into an escrow account per O.C.G.A. § 48-6-76(b) may be refunded to the claimant according to law.

Sincerely,

Frank M. O'Connell

FOC/RJL/me

cc: Clerk of Superior Court,