

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-96 (4) R
Mortgage Tax
May 22, 1996

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M960126B

On January 26, 1996, a Petition for Advisory Opinion was received from The Edna Huff Trust, c/o Edna Huff, 106 Maryton Road, White Plains, New York.

The issue raised by Petitioner, The Edna Huff Trust (the "Trust"), is whether the recording of a reverse mortgage placed on premises held in trust is exempt from the mortgage recording tax (Article II of the Tax Law) based on the exemption provided in section 252-a.2 of the Tax Law (the exemption for reverse mortgages).

Petitioner presents the following facts. The grantor of the Trust, Edna Huff (the "grantor"), is approximately 77 years old. The trustees are the grantor's adult son and daughter.

A reverse equity mortgage (the "mortgage") was given by the grantor and the trustees to the Bank of New York Mortgage Company. The lien of the mortgage encumbers a single-family house in the Town of Greenburgh. The premises are occupied solely by the grantor. The grantor created the Trust, which is irrevocable, in 1988 and conveyed the premises to the Trust. The grantor reserved a life estate in the premises upon the conveyance to the Trust.

The Bank of New York Mortgage Company received an opinion from an attorney prior to the execution of the mortgage. In the opinion the attorney indicated that if the Trust were modified to provide notice to the lender in the event of a change of occupancy or transfer of beneficial interest, it would comply with Paragraph 4-5 of §4235.1 of the Department of Housing and Urban Development ("HUD") Handbook-Revision No. 1 dated November 18, 1994, which covers the HUD approved Reverse Mortgage Program. Paragraph 4-5 sets forth the conditions under which a Home Equity Conversion Mortgage (i.e., a HUD approved reverse mortgage) may be originated in the name of a living trust. Based on the opinion, the Trust was modified to provide the requisite notice to the lender and, therefore, according to Petitioner, the mortgage is in compliance with all relevant federal laws and regulations, and Paragraph 4-5 of the HUD Handbook.

Section 252-a.2 of the Tax Law provides an exemption from all taxes imposed or authorized to be imposed by Article 11 in the case of the recording of "Reverse mortgages conforming to the provisions of section two hundred eighty or two hundred eighty-a of the real property law securing obligations of mortgagors or exempted therefrom pursuant to subdivision four of section two hundred eighty or subdivision four of section two hundred eighty-a of the real property law "

Section 280-a(4) of the Real Property Law which deals with reverse mortgage loans for persons seventy years of age or older, provides:

The banking board shall adopt those rules or regulations as it considers appropriate to govern reverse mortgage loans made pursuant to this section. No reverse mortgage loan shall be made unless it conforms to the requirements of this section and such rules and regulations as the banking board may adopt except those reverse mortgage loans made pursuant to section two hundred eighty of this article. A reverse mortgage loan made by any authorized lender, national banking association, federal savings and loan association or federal credit union in conformity with applicable federal laws and regulations specifically regulating reverse mortgage loans shall be deemed to conform to the requirements of this section unless such reverse mortgage loan fails to conform to such rules and regulations as the banking board has expressly declared to be neither preempted by, nor otherwise inconsistent with such federal laws or regulations.

Section 644.1(c)(2)(ii) of 20 NYCRR (the mortgage recording tax regulations) provides that in order to claim an exemption from the mortgage recording taxes based on the claim that a mortgage is a reverse mortgage made pursuant to the provisions of section 280-a of the Tax Law, an affidavit, made in duplicate, signed by the mortgagee, setting forth the following must be submitted to the recording officer at the time the mortgage is presented for recording:

(a) the mortgage is a reverse mortgage given by a mortgagor who is or mortgagors all of whom are at least 70 years of age;

(b) the reverse mortgage is of real property improved by a one- to four- family residence or condominium unit that is the residence of the mortgagor or mortgagors;

(c) the reverse mortgage conforms to all other provisions of section 280-a of the Real Property Law.

Section 79.1(b) of Part 79 of the General Regulations of the Banking Board (3 NYCRR Part 79), which governs reverse mortgages, provides:

Neither this Part nor Parts 38, 39, 80 or 82 shall apply to any loan which conforms to the requirements of the Demonstration Program of Insurance of Home Equity Conversation Mortgages for Elderly Homeowners, also known as the "HUD/HECM" reverse mortgage loan program, 12 USC Section 1715-20.

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Provided that the mortgage is in conformity with federal law and regulations addressing reverse mortgages and not inconsistent with any regulations of the Banking Board, it shall be deemed to conform with the requirements of section 280-a of the Real Property Law and be exempt from the mortgage recording tax under section 252-a.2 of the Tax Law. Accordingly, the mortgage may be recorded without payment of the tax if the affidavit described in section 644.1(c)(2)(ii) of the regulations establishing the exemption is submitted to the recording officer at the time of recording.

DATED: May 22, 1996

/s/
Doris S. Bauman
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.