

LEGAL UPDATE - FEBRUARY 2008**WARNING: BAD TIMING MAY DOUBLE YOUR REALTY TRANSFER TAX**

On December 15, 2007, the Pennsylvania Department of Revenue issued regulations on the Pennsylvania Realty Transfer Tax, and issued clarifications to those Regulations in Realty Transfer Tax Bulletin 2008-01 on January 3, 2008. The tax is generally 2.0% of the value of any transfer of real estate in Pennsylvania.

For the first time ever, Pennsylvania's Department of Revenue has taken the position that if a Buyer of real estate enters into a Purchase and Sale Agreement, and then, prior to or at Closing, assigns the contract to his or her wholly-owned entity, such as a Limited Liability Company, the 2.0% Realty Transfer Tax may be due **TWICE!**: Once due to the assignment of the contract to the entity, and again upon closing with the Seller.

Example: John Doe enters into a contract in the name of "John Doe, or his assigns" to purchase a \$500,000 piece of real estate. Before closing, Joe Doe forms "John Doe Real Estate, LLC" wholly-owned by John Doe. At Closing, John Doe assigns the contract to the LLC, and the Deed is titled in the name of the LLC. In this example, the Pennsylvania Department of Revenue will seek to collect \$20,000 in Realty Transfer Taxes: \$10,000 Realty Transfer Tax on the assignment of the contract from John Doe to John Doe Real Estate, LLC; and an additional \$10,000 Realty Transfer Tax on the Deed from Seller to John Doe Real Estate, LLC.

The Realty Transfer Tax Bulletin cautions that in order to avoid the Double Taxation, it is necessary that the real estate LLC must have existed prior to entering into the Purchase and Sale Agreement **AND** the Purchase and Sale Agreement must specify that the Purchaser is the real estate LLC. It should be noted that these rules apply to all other types of entities in which a purchaser may choose to hold real estate, including limited partnerships and corporations.

What does that mean?

It means that you should no longer sign Purchase and Sale Agreements except in the name of the entity in which you wish to take title **AND** that such entity exists prior to signing. If you have signed such an Agreement, you may wish to reconsider whether you should take title in the name of the party signing the Agreement, or consider canceling the Agreement, if possible, and entering into a new Agreement in the name of the entity taking title after such entity is organized.

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Note: This Legal Update does not contain legal advice or provide a thorough and complete analysis of the law, and no liability is accepted in connection with it. Some provisions of the law are not covered. The purpose of this Legal Update is to provide a basic summary of selected main provisions and their effects and to offer some general practical guidance. Specific legal advice should be sought in relation to the facts in any given case.