

NRS 375.090 (10): Exemption 10

Guidance Letter 09-003

Prepared by Nevada Department of Taxation

The guidelines suggested here are intended to assist the County Recorder and the taxpayer when the following exemption from the real property transfer tax is claimed:

NRS 375.090 (10): A conveyance of real property by deed which becomes effective upon the death of the grantor pursuant to NRS 111.109.

The proposed regulations have not yet been adopted by the Nevada Tax Commission. These guidelines are based on the original proposed language and comments during and subsequent to the workshop. These guidelines will expire upon adoption of permanent regulations. These guidelines are promulgated under authority of the Department to ensure that the tax imposed by NRS 375.023 is collected fairly and equitably in all counties. *See NRS 375.019(1)*.

Introduction

Prior to the NRS 375.090(10), the standard practice for recording the deed and the subsequent Affidavit of Death was that the original Deed Upon Death was filed with a Declaration Of Value claiming NRS 375.090(3), true status. Upon the death of the grantor another Declaration of Value was filed with the Affidavit of Death to effectuate the transfer. If the grantee qualified for an exemption one was granted otherwise Real Property Transfer Tax was applied.

During the Guidelines For Exemptions Manual workshop we were given different guidance by the AG's office as to the handling of the final transfer.

The following guidelines apply:

- 1.) The Deed Upon Death is a non-taxable event at the time the grantor files the original deed. As there is no transfer there can be no tax. A Declaration of Value is to be filed with \$0 tax.
- 2.) Upon the death of the final grantor of the Deed Upon Death, the Declaration of Value, the copy of the death certificate and the Death of Grantor Affidavit of the last grantor are presented for recording. NRS 375.090 (10) is the exemption to be used.
- 3.) The Deed Upon Death can be revoked at any time prior to the death of the last grantor.
- 4.) See NRS 111.109 below for specific statutes dictating the documents to be used to execute both the Deed and the Revocation of Deed

NRS 111.109 Conveyance by deed which becomes effective upon death of grantor.

1. The owner of an interest in real property may create a deed that conveys his interest in real property to a grantee which becomes effective upon the death of the owner. Such a conveyance is subject to liens on the property in existence on the date of the death of the owner.

2. The owner of an interest in real property who creates a deed pursuant to subsection 1 may designate in the deed:

(a) Multiple grantees who will take title to the property upon his death as joint tenants with right of survivorship, tenants in common, husband and wife as community property, community property with right of survivorship or any other tenancy that is recognized in this State.

(b) A grantee or multiple grantees who will take title to the property upon his death as the sole and separate property of the grantee or grantees without the necessity of the filing of a quitclaim deed or disclaimer by the spouse of any grantee.

3. If the owner of the real property which is the subject of a deed created pursuant to subsection 1 holds the interest in the property as a joint tenant with right of survivorship or as community property with the right of survivorship and:

(a) The deed includes a conveyance of the interest from each of the other owners, the deed becomes effective on the date of the death of the last surviving owner; or

(b) The deed does not include a conveyance of the interest from each of the other owners, the deed becomes effective on the date of the death of the owner who created the deed only if the owner who conveyed his interest in real property to the grantee is the last surviving owner.

4. If an owner of an interest in real property who creates a deed pursuant to subsection 1 transfers his interest in the real property to another person during his lifetime, the deed created pursuant to subsection 1 is void.

5. If an owner of an interest in real property who creates a deed pursuant to subsection 1 executes and records more than one deed concerning the same real property, the deed that is last recorded before the death of the owner is the effective deed.

6. A deed created pursuant to subsection 1 is valid only if executed and recorded as provided by law in the office of the county recorder of the county in which the property is located before the death of the owner or the death of the last surviving owner. The deed must be in substantially the following form:

DEED

I (We) (owner) hereby convey to (grantee), effective on my (our) death, the following described real property:
(Legal Description)

THIS DEED IS REVOCABLE. THIS DEED DOES NOT TRANSFER ANY OWNERSHIP UNTIL THE DEATH OF THE GRANTOR. THIS DEED REVOKES ALL PRIOR DEEDS BY THE GRANTOR WHICH CONVEY THE SAME REAL PROPERTY PURSUANT TO SUBSECTION 1 OF NRS 111.109 REGARDLESS OF WHETHER THE PRIOR DEEDS FAILED TO CONVEY THE GRANTOR'S ENTIRE INTEREST IN THE SAME REAL PROPERTY.

.....
(Signature of Grantor)

7. A deed created pursuant to subsection 1 may be revoked at any time by the owner or, if there is more than one owner, by any of the owners who created the deed. The revocation is valid only if executed and recorded as provided by law in the office of the county recorder of the county in which the property is located before the death of the owner who executes the revocation. If the property is held as joint tenants with right of survivorship or as community property with the right of survivorship and the revocation is not executed by all of the owners, the revocation does not become effective unless the revocation is executed and recorded by the last surviving owner. The revocation of deed must be in substantially the following form:

REVOCATION OF DEED

The undersigned hereby revokes the deed recorded on (date), in docket or book, at page, or instrument number, records of County, Nevada.

.....
(Date) (Signature)

8. Upon the death of the last grantor of a deed created pursuant to subsection 1, a declaration of value of real property pursuant to NRS 375.060 and a copy of the death certificate of each grantor must be attached to a Death of Grantor Affidavit and recorded in the office of the county recorder where the deed was recorded. The Death of Grantor Affidavit must be in substantially the following form:

DEATH OF GRANTOR AFFIDAVIT

..... (affiant name), being duly sworn, deposes and says that (name of deceased), the decedent mentioned in the attached certified copy of the Certificate of Death, is the same person as (name of grantor), named as the grantor or as one of the grantors in the deed recorded on (date), in docket or book, at page, or instrument number, records of County, Nevada, covering the following described property:
(Legal Description)

..... (affiant name) is the grantee or at least one of the grantees to whom the real property is conveyed upon the death of the grantor (name of deceased) or is the authorized representative of the grantee or at least one of the grantees.

.....
(Date) (Signature)

9. The provisions of this section must not be construed to limit the recovery of benefits paid for Medicaid.
(Added to NRS by 2003, 2507; A 2005, 960)