



Metropolitan Title Company,

a Division of First American Title Insurance Company

Customer Alert

To: Our Valued Customer
From: East Region Legal Department
Date: June 18, 2008
Re: "Dual" Principal Residence Exemption ("PRE")

On April 8, 2008, the Governor signed into law House Bill No. 4215 (as Act 96 of the Public Acts of 2008, effective immediately). The House Fiscal Agency's Legislative Analysis stated:

... the bill was aimed at addressing the impact on homeowners of the slow real estate market in various areas of the state, including populous southeastern Michigan. ... the job market is forcing people to move and find housing elsewhere but the old home is not selling. Under Michigan's property tax system ... principal residences are exempt from the local 18-mill school operating property taxes... An individual can only have one principal residence. HB 4215 would allow for the exemption to continue on a home for up to three years (in addition to another principal residence) if it is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose.

A homeowner "caught" in these circumstances can continue an existing PRE by filing new Form 4640 (copy attached). You should be familiar with two Department of Treasury forms: Form 2602 - "Request to Rescind Homeowner's Principal Residence Exemption" - and Form 2368 - "Homeowner's Principal Residence Exemption Affidavit" - because since 1994 whoever prepares the closing statement for a residential sale must also prepare and file either of these forms when they apply. For most residential sales, Forms 2368 and 2602 will continue to be used.

The Act affects a settlement agent's responsibility, however, in those cases where the Buyer will occupy the property as their principal residence AND already owns another home for which they have claimed a PRE. Even though this Buyer is not also a Seller of their "old" home, Section 7cc (5) requires them to rescind a claimed PRE if they no longer use that home as their principal residence. In these circumstances, the settlement agent must prepare and make available to the Buyer both Forms 2368 and 4640.1

Although Page 2 of Form 4640 includes instructions for completion of the form and the annual re-filing requirements, we recommend that the buyers' sign an acknowledgment that they are responsible for the accuracy of all information on Form 4640 and for the annual verifications of their continuing entitlement to the exemption. We include the full text of amended Section 7cc (5) as the last page of this alert for your reference with respect to the annual verification requirements and penalties for failure to comply; you may wish to add this text to your own form or statement.

The Michigan Department of Treasury has not yet revised its online version of Form 2368 to reflect the effect of Act 96. Form 2368 states: "A Request to Rescind Homeowner's Principal Residence Exemption, Form 2602 must be filed with the local assessor for any previous claims." Line 13 asks if the homeowner has claimed a PRE for another Michigan principal residence; line 14 asks (if the answer to 13 is yes) if you have rescinded that PRE. If the Buyer is entitled to a "dual" exemption, then they should check the "Yes" box on both lines. Filing new Form 4640 is, in fact, filing a rescission of "that principal residence exemption" - it is simply a conditional rescission.

This is the full text of MCL 211.7cc (5); the language added by Act 96 appears in **bold**.

(5) Not more than 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption, that owner shall rescind the claim of exemption by filing with the local tax collecting unit a rescission form prescribed by the department of treasury. **However, if an owner is eligible for and claims an exemption for that owner's current principal residence, that owner may retain an exemption for not more than 3 tax years on property previously exempt as his or her principal residence if that property is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose by filing a conditional rescission form prescribed by the department of treasury on or before May 1 with the local tax collecting unit. Property is eligible for a conditional rescission if that property is available for lease and all other conditions under this subsection are met. A copy of the conditional rescission form shall be forwarded to the department of treasury according to a schedule prescribed by the department of treasury. An owner who files a conditional rescission form shall annually verify to the assessor of the local tax collecting unit on or before December 31 that the property for which the principal residence exemption is retained is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose. If an owner does not annually verify by December 31 that the property for which the principal residence exemption is retained is not occupied, is for sale, is not leased, and is not used for any business or commercial purpose, the assessor of the local tax collecting unit shall deny the principal residence exemption on that property. If property subject to a conditional rescission is leased, the local tax collecting unit shall deny that conditional rescission and that denial is retroactive and is effective on December 31 of the year immediately preceding the year in which the property subject to the conditional rescission is leased.** An owner who fails to file a rescission as required by this subsection is subject to a penalty of \$5.00 per day for each separate failure beginning after the 90 days have elapsed, up to a maximum of \$200.00. This penalty shall be collected under 1941 PA 122, MCL 205.1 to 205.31, and shall be deposited in the state school aid fund established in section 11 of article IX of the state constitution of 1963. This penalty may be waived by the department of treasury.

1 The General Property Tax Act, of course, has never required a Buyer to claim a PRE for their new home by signing and filing Form 2368. Nor does it now – as amended by Act 96 of 2008 – require the owner of 2 homes to only conditionally rescind the existing claim of PRE. However unlikely it may be, a homeowner intended to benefit from the provisions of Act 96 is entitled to rescind unconditionally their existing PRE by filing Form 2602 for their “old” home and declining to claim a PRE for their “new” home by signing Form 2368. A closer’s responsibility is only to make these forms available and – if requested by a party – file them properly.