

CHAPTER 287

REGISTRY TAX ON MORTGAGES ON REAL ESTATE.

287.01 DEFINITIONS.

HISTORY. 1907 c. 328 s. 1; G.S. 1913 s. 2301; G.S. 1923 s. 2322; M.S. 1927 s. 2322.

The mortgage registry tax originating with Laws 1907, Chapter 328, is constitutional. The subject of taxation is the security and not the debt. The tax must be paid upon the filing for record of an agreement for an extension or removal. *Mutual Benefit v County of Martin*, 104 M 179, 116 NW 572.

A deed was executed by the defendant to the plaintiff who executed to him a separate contract to reconvey. These instruments were in effect a mortgage, but the tax was not paid, solely by reason of the ignorance of the parties. Equity upon payment of the mortgage tax will afford relief by reforming the deed. *Forest Lake v Ekstrand*, 112 M 412, 128 NW 455; *Staples v East St. Paul State Bank*, 122 M 419, 142 NW 721; *Mason v Fichner*, 120 M 185, 139 NW 485.

The law which requires savings banks to pay a registry mortgage tax upon their mortgages without exempting such mortgages from taxation otherwise, is constitutional. *State v Farmers & Mechanics*, 114 M 95, 130 NW 445, 851.

A mortgage given to secure an indebtedness of \$50.00 or less is within the operation of the law and taxable. *State ex rel v Fitzgerald*, 117 M 192, 134 NW 728.

In the instant case the register of deeds recorded the mortgage without payment of the registry tax. The record of such mortgage being prohibited by the statute and thereby declared invalid for any purpose, is not evidence of the fact that it was duly recorded or of the validity of the instrument. *Orr v Sutton*, 119 M 193, 137 NW 973; *Orr v Sutton*, 127 M 37, 148 NW 1066; *State ex rel v Probate Court*, 145 M 159, 176 NW 493.

Laws 1907, Chapter 328, is a revenue measure solely and should not be construed as a restriction upon the right to contract with reference to real estate as security. *Staples v East St. Paul State Bank*, 122 M 419, 142 NW 721.

The mortgagee being under no legal obligation to record the mortgage, the fact that the borrower in addition to paying the maximum rate of interest also contracts to pay the recording fees does not constitute usury: *Lassman v Jacobson*, 125 M 218, 146 NW 350.

Failure to pay the tax superimposed upon the mortgage a state of dormancy and the enforcement of the mortgage is held in abeyance until the statutory conditions are complied with by the payment of the tax. *First State Bank v Hayden*, 121 M 45, 140 NW 132; *Engenmoen v Lutroe*, 153 M 409, 190 NW 894.

Section 287.01 is a revenue measure but an absolute deed may be a mortgage, notwithstanding the provisions in 287.01 that an instrument relating to real estate shall not be valid as security unless the fact that it was so intended and the amount of the deed are expressed in it. *Farmers Bank v Woolery*, 156 M 193, 194 NW 759; *Lundeen v Nyborg*, 161 M 391, 201 NW 623.

The vendors in an executory contract for the sale of land under which the vendees went into possession may not terminate the contract by serving a notice of cancellation on account of default in payments without first paying the registration tax. *Halvorson v Bexell*, 157 M 97, 195 NW 635.

Where the mortgage registration tax has been paid upon a contract for the sale of real estate, no additional tax is required upon an assignment of such contract by the vendor. *Van Dam v Bakker*, 162 M 124, 202 NW 343.

The agreement in controversy was not a sale but a mere option. *Engen v Sheridan*, 163 M 1, 203 NW 434.

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The contract of sale may be deemed a mortgage. *State v First National*, 164 M 235, 204 NW 874, 205 NW 375.

A trust deed by an employee of a bank to certain of the directors to secure an indebtedness is not an assignment for the benefit of creditors but a mortgage. *Nelson v Poss*, 172 M 149, 214 NW 787.

The debtor executed an absolute deed of certain property to a creditor. The deed did not state that it secured a debt, nor state the amount thereof, and no mortgage registry tax was paid, and a creditor who had no knowledge of the deed obtained a judgment against the defendant on its debt. The judgment was superior to the rights of the vendee to a deed. *Farmers National v Murphy*, 173 M 244, 217 NW 132.

The registry tax was paid when the original mortgage was recorded, but no tax was paid on its extensions. The statute requiring payment is a revenue measure and non-payment does not make the instrument to which the tax is applicable invalid, though it cannot be enforced until the tax is paid. The defendant was not enforcing a right coming to it by reason of the extensions but a right coming by reason of the mortgage; was not making use of the extensions; and the foreclosure was good though the tax was not paid. *Mooty v Union Bond*, 180 M 550, 231 NW 406.

The essential elements of a real estate mortgage are: (1) a conveyance, and (2) security for a debt. *Spielman v Albinson*, 183 M 282, 236 NW 319.

The mortgage registration tax along with other tax laws repealed the corporation excise tax under section 273.51. *Bemis v Wallace*, 197 M 216, 266 NW 690.

Payment of the mortgage registry tax on a contract for a deed may be made at any time before the instrument is enforced. *Kirk v Welch*, 212 M 300, 3 NW(2d) 426.

The power of taxation is inherent in sovereignty; as such constitutional provisions are not a grant of power but a limitation thereon and except as limited the power of the legislature is exhaustive and embraces every conceivable subject of taxation; and an executory contract for the sale of land under which the vendee is entitled to possession is deemed, for the purpose of the mortgage registration act, a mortgage. *S. R. A. Inc. v State*, 213 M 487, 7 NW(2d) 484.

Contention that the contract described in the Torrens registration suit as a contract for lease with an option to purchase ought to have been registered and a tax paid thereon is concluded by the judgment which cannot be collaterally attacked on that ground. *Nitkey v McKnight*, 87 F(2d) 916; *Certiorari denied*, 57 SC 925; 301 US 697.

A larger privilege tax on insurance companies doing business in cities of the first class than on companies doing business in smaller cities and villages throughout the state, is legal. 1934 OAG 810, Dec. 7, 1933 (86a-30).

Mortgages executed and delivered under the home owners loan act of 1933 are not subject to the mortgage registration statutes, and the provisions of the federal farm loan act of 1916 and the home owners loan act of 1933 cannot be distinguished. 1934 OAG 816, Aug. 26, 1933 (418c-1).

Mortgages to federal reserve banks are exempt from the registration tax. 1934 OAG 817, Dec. 4, 1934 (418a-14).

The state is not bound to furnish a registry, but if it sees fit to do so it cannot use its control as a means to impose a liability that it cannot impose directly. This affects the farm credit act of 1933, chapter 63. 1934 OAG 819, Nov. 15, 1934 (418a-14).

The mortgage registration tax must be paid even though the contract contains no provision relating to possession. OAG July 11, 1934 (418a-12).

Where a new mortgage was given to take up a previous mortgage, the new mortgage must pay the registration tax. 1938 OAG 432, July 23, 1937 (418a-12).

Where a mortgage given by a telephone company to a trust company covering the mortgagor's interest in lands was offered for record in the register of deeds office, the register could not insist upon payment of a mortgage registration tax, because while the telephone lines extended throughout the county the telephone company owned no real estate. The subject of taxation is the security and not the debt. 1940 OAG 320, May 25, 1939 (418b-21).

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An instrument purporting to assign, set over, and transfer all rights in realty coming to the assignor as heir of an estate held to be a mortgage with a defeasance clause. Such instrument requires payment of the mortgage registration tax. OAG June 13, 1939 (373b-9).

A mortgage running to a reconstruction finance corporation need not pay the registration tax. OAG Dec. 7, 1938 (418c).

Unless there is an additional indebtedness, new bonds evidencing old indebtedness need not pay a second registration tax. OAG May 28, 1936 (418a-14).

Where the land was purchased for a consideration of 10,000 bushels of wheat deliverable at stated times, and a mortgage made accordingly, the registration of the mortgage is not invalid if the value of the wheat is ascertained by the treasurer and the amount paid. 1942 OAG 336, May 28, 1942 (418-A).

Where a new contract for a deed increased the amount, extended the maturity, and provided changed terms of payment, a tax was payable. OAG Aug. 21, 1944 (418b-17).

Where a new mortgage is executed to a new mortgagee to refinance an existing mortgage, a tax is payable. OAG Oct. 18, 1944 (418a-14).

Constitutionality of Minnesota "tax bargain" statute. 19 MLR 715.

287.02 EXECUTORY CONTRACT FOR SALE OF LAND, WHEN A MORTGAGE.

HISTORY. 1907 c. 328 s. 1; G.S. 1913 s. 2301; G.S. 1923 s. 2322; M.S. 1927 s. 2322.

Note: See annotations under section 287.01.

287.03 WHAT INSTRUMENTS VALID SECURITY FOR DEBT.

HISTORY. 1907 c. 328 s. 1; G.S. 1913 s. 2301; G.S. 1923 s. 2322; M.S. 1927 s. 2322.

Note: See annotations under section 287.01.

287.04 MORTGAGES EXEMPTED.

HISTORY. 1907 c. 328 s. 1; G.S. 1913 s. 2301; G.S. 1923 s. 2322; M.S. 1927 s. 2322.

NOTE: See annotations under section 287.01.

287.05 TAX ON RECORD OR REGISTRATION.

HISTORY. 1907 c. 328 s. 2; 1913 c. 163 s. 1; G.S. 1913 s. 2302; 1917 c. 73; 1921 c. 445; G.S. 1923 s. 2323; M.S. 1927 s. 2323; 1945 c. 288 s. 1.

A loan for which the borrower paid the maximum interest and in addition paid the mortgage registry tax, is not usurious. *Lassman v Jacobson*, 125 M 218, 146 NW 350.

The proper mortgage registry tax upon a mortgage of \$850.00 as the law existed in 1912 was \$4.00. *Chance v Hawkinson*, 140 M 250, 167 NW 734.

If a deed was given as security, the fact that it contains no statement of the amount of the debt and the further fact that the mortgage registration tax was not paid, will not defeat an action brought to have the deed declared a mortgage. *Lundeen v Nyborg*, 161 M 391, 201 NW 623.

An objection that a contract for the sale of real estate is unenforceable for the non-payment of the mortgage registration tax comes too late when made for the first time by an objection to the entry of judgment. *State Bank v Sylte*, 162 M 72, 202 NW 70.

A deed was executed and recorded by a debtor to a creditor. The deed did not state the amount nor the fact that it was given to secure a debt, and no mortgage registry tax was paid. Another creditor with no knowledge of the deed obtained a

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judgment. It was held that the judgments were superior to the rights obtained under the deed. *Farmers National v Murphy*, 173 M 244, 217 NW 132.

Where tax was paid on the original mortgage it may be enforced although there have been two extensions not accompanied by a tax payment. *Mooty v Union Bond*, 180 M 550, 231 NW 406.

An agreement to pay delinquent taxes and accrued interest on a mortgage assumed under a contract for deed does not create a lien upon which a mortgage registration tax must be paid. *Gruenberg v Saumweber*, 188 M 568, 248 NW 724.

The federal farm loan act exempts real estate mortgages executed to the defendant pursuant to its provisions from the mortgage registry act. *McGovern v Federal Land Bank*, 209 M 403, 296 NW 473.

The state tax on national bank shares is discriminatory, there being evidence showing use of individual capital in competition with the business of national banks. *State v First National*, 47 SC 468.

Banks operating under the provisions of the federal farm credit act of 1933, section 63, need not pay a mortgage registration fee on their mortgages. 1934 OAG 819, Nov. 15, 1934 (418a-14).

An instrument that is both a chattel mortgage and a contract for a deed may be filed with the register of deeds as a chattel mortgage without payment of a registry tax. OAG July 13, 1935 (418b-3).

A mortgage registry tax must be paid on a contract for a deed executed by an insolvent bank while in the process of liquidation. OAG July 23, 1935 (418-12).

A mortgage given to secure interest only is not subject to the registration tax. 1936 OAG 384, Dec. 29, 1935 (418a-14).

Mortgages running to cooperative associations must pay the registry tax. OAG March 23, 1936 (418a-12).

A mortgage assumed by the vendee in a land contract is to be deducted from the total indebtedness in ascertaining the amount of the mortgage registration tax. 1938 OAG 431, Aug. 17, 1938 (418a-11).

Registration tax on a church mortgage should be paid to the treasurer of the county in which the real estate is situated. 1938 OAG 430, Jan. 20, 1937 (418c-3).

Where a contract for a deed specifies no principal amount but only certain monthly payments to the grantor during his lifetime, the amount of the tax is based upon the life expectancy. 1938 OAG 431, Aug. 17, 1938 (418a-11).

A trust deed given by a cooperative power company to secure a note payable to the federal government in connection with a rural electrification program may be registered without payment of the tax. OAG May 29, 1939 (418b-19).

If the amount of the tax on a mortgage is insufficient, it is at the risk of the mortgagee. OAG Feb. 16, 1944 (418a-2).

Where a five-year mortgage is executed to a national bank, and at the same time an insurance company in writing agrees to take an assignment of the mortgage in two years, taxes are computed separately on each instrument. OAG Sept. 28, 1944 (418b-13).

287.06 EXEMPTION FROM OTHER TAXES.

HISTORY. 1907 c. 328 s. 3; G.S. 1913 s. 2303; G.S. 1923 s. 2324; M.S. 1927 s. 2324.

The two per cent paid annually on all premiums received in the state by a foreign insurance company for the privilege of doing business in the state is not a gross earnings tax and the real and personal property of such corporation is taxable and insurance companies are not exempt from payment of the mortgage registry tax. *Mutual Benefit v County of Martin*, 104 M 179, 116 NW 572.

Savings banks are required to pay a registry tax upon mortgages. *State v Farmers & Mechanics*, 114 M 95, 130 NW 445, 851.

Where the borrower contracts to pay the maximum rate of interest plus the mortgage registry tax the mortgage is not usurious. *Lassman v Jacobson*, 125 M 218, 246 NW 350.

To destroy a judgment creditor's right to use the judgment as a means for obtaining land through redemption, it is not indispensable that the judgment

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creditor, in addition to tender of payment, bring suit to compel satisfaction of the judgment and deposit the money tendered in court. *Orr v Sutton*, 127 M 37, 148 NW 1066.

A financial institution which is a branch of the farm credit administration is exempt from the mortgage registry tax. OAG Nov. 15, 1934 (418a-14).

Church funds that are exempt from personal property taxes are exempt from the mortgage registration tax. OAG Jan. 18, 1938 (418a-14); OAG Sept. 30, 1938 (418a-14).

Mortgages growing out of the loan of endowment money for school purposes need not pay registration tax. OAG May 16, 1939 (418c-4).

Where a bank loans money to a religious corporation upon its exempt property, the bank must still pay the tax. OAG Aug. 9, 1939 (418b-22).

287.07 MORTGAGES TO SECURE OBLIGATIONS TO BE ISSUED.

HISTORY. 1907 c. 328 s. 4; G.S. 1913 s. 2304; G.S. 1923 s. 2325; M.S. 1927 s. 2325.

287.08 TAX, HOW PAYABLE; RECEIPTS.

HISTORY. 1907 c. 328 s. 5; G.S. 1913 s. 2305; G.S. 1923 s. 2326; M.S. 1927 s. 2326.

It is no part of the duty of the register of deeds to determine whether the instrument is a mortgage or an absolute deed. OAG Feb. 26, 1945 (418b-5).

287.09 MORTGAGE ON EXEMPT PROPERTY; PROPERTY NOT DIRECTLY TAXED; RECEIPT; APPORTIONMENT OF TAX.

HISTORY. 1907 c. 328 s. 6; G.S. 1913 s. 2306; G.S. 1923 s. 2327; M.S. 1927 s. 2327.

Registration tax on church property should be paid to the treasurer of the county in which the real estate mortgaged is situated. 1938 OAG 430, Jan. 20, 1937 (418c-3).

287.10 PREPAYMENT OF TAX; EVIDENCE; NOTICE.

HISTORY. 1907 c. 328 s. 7; 1913 c. 162 s. 2; G.S. 1913 s. 2307; G.S. 1923 s. 2328; M.S. 1927 s. 2328; 1929 c. 222 s. 1.

Upon payment of the mortgage tax, equity will afford relief by reforming the deed. *Forest Lake v Ekstrand*, 112 M 412, 128 NW 455; *Mason v Fichner*, 120 M 185, 139 NW 485; *Orr v Sutton*, 127 M 37, 148 NW 1066.

The payment of the maximum rate of interest plus the mortgage registration tax does not render the loan usurious. *Lassman v Jacobson*, 125 M 218, 146 NW 350.

Where an executory written contract for the sale of land is pleaded in the complaint and admitted in the answer, it is not material in determining the rights of the parties between themselves whether or not the registry tax has been paid. *Pioneer Loan v Cowden*, 128 M 307, 150 NW 903.

Where the mortgage registration tax has been paid upon a contract, no additional tax is required upon assignment of such contract by the vendor. *Van Dam v Bakker*, 162 M 124, 202 NW 343.

The burden of showing the payment of the mortgage registration tax is upon him who offers in evidence a statutory notice of cancellation of the contract with proof of service, an objection being made that such tax has not been paid. *Stadlermann v Boothroyd*, 170 M 430, 212 NW 908.

Although the registration tax had not been paid, the mortgage may be admitted in evidence in the prosecution of a notary public for forgery in the first degree. *State v Bauer*, 171 M 345, 214 NW 262.

Payment of the mortgage registration tax on a contract for a deed may be made at any time before the instrument is in force. *Kirk v Welch*, 212 M 301, 2 NW(2d) 426.

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A contract for a deed to the property of an insolvent bank in the process of liquidation is not entitled to be recorded until the mortgage registration tax has been paid. 1936 OAG 383, July 23, 1935 (418a-12).

287.11 MORTGAGES RECORDED OR REGISTERED PRIOR TO PASSAGE OF THIS CHAPTER.

HISTORY. R.S. 1851 c. 12 s. 3; P.S. 1858 c. 9 s. 3; 1860 c. 1 ss. 6, 7, 35; 1861 c. 1 s. 4; 1862 c. 6 s. 1; G.S. 1866 ss. 6, 7, 50; 1878 c. 1 s. 29; G.S. 1878 c. 11 s. 29; G.S. 1894 c. 1537; 1903 c. 246; 1905 c. 66; R.L. 1905 s. 804; 1907 c. 328 s. 8; 1913 c. 162 s. 3; G.S. 1913 s. 2308; G.S. 1923 s. 2329; M.S. 1927 s. 2329.

287.12 TAXES, HOW APPORTIONED.

HISTORY. 1907 c. 328 s. 9; 1913 c. 352 s. 1; G.S. 1913 s. 2309; G.S. 1923 s. 2330; M.S. 1927 s. 2330.