

CHAPTER 287

REGISTRY TAX ON MORTGAGES ON REAL ESTATE

287.01 DEFINITIONS.

In view of the privileges as to taxation accorded to savings banks by section 273.52, a law requiring savings bank to include in their assets mortgages on Minnesota real estate on which registration tax had been paid is a valid law. *Farmers' and Mechanics' v State*, 34 SC 354, 232 US 516.

New mortgage given to replace an existing mortgage, or an extension agreement on a mortgage requires payment of the tax. OAG May 17, 1945 (418-B-13).

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

Section 287.02 is a valid enactment. *Petition of S.R.A. Inc.* 213 M 487, 7 NW(2d) 484.

287.03 WHAT INSTRUMENTS VALID SECURITY FOR DEBT.

Payment of the mortgage registry tax on a contract for a deed may be made at any time before the instrument is enforced. Failure to pay the tax does not render the instrument void, but power of enforcement is suspended until the tax is paid. *Kirk v Welch*, 212 M 300, 3 NW(2d) 426.

The statute does not purport to prohibit the recording of the instrument unless the tax is paid. It may be recorded without payment of the tax. All the statute does is deny the right to enforce the obligation evidenced by the instrument until the tax has been paid. OAG Feb. 9, 1943 (373-B-11).

287.04 MORTGAGES EXEMPTED.

When a new contract for a deed increases the amount, extends the maturity, and permits new terms of payment, a mortgage registry tax must be paid. OAG Aug. 21, 1944 (418-B-5).

A new mortgage to replace the old, or an extension agreement, requires payment of the mortgage registry tax. OAG May 17, 1945 (418-B-13).

Where rules forbid a discount bank to enter into a participation agreement with its correspondent bank, a new mortgage for the same indebtedness given to two mortgagees instead of one, the transaction does not come under the exemptions described in section 287.04, and the registry tax must be paid on both mortgages. OAG Oct. 11, 1946 (418-B-17).

In order to avoid paying the full tax on a new mortgage, it must show on its face facts bringing it under the provisions of section 287.04. OAG Nov. 25, 1946 (418-B-17).

287.05 TAX ON RECORD OR REGISTRATION.

NOTE: The registry tax on mortgages on real estate is a tax on the security and not on the land as the debt. It is a revenue measure. It is not a registration fee. The law is authorized by constitutional amendment ratified Nov. 3, 1896. The law is based upon L. 1907, c. 328, as amended or supplemented by L. 1913, c. 163, ss. 1, 2, 3; L. 1913, c. 352, s. 1; L. 1917, c. 73; L. 1921, c. 445; L. 1929, c. 30; L. 1929, c. 222, s. 1; L. 1945, c. 288, s. 1.

A tax must be paid on a mortgage executed before L. 1945, c. 288, became effective. OAG May 7, 1945 (418-a-11).

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No registry tax need be paid on a purchase money mortgage running to the federal housing administration. OAG July 26, 1945 (418-a-14).

By L. 1945, c. 288, the rate is changed to 15 cents. This does not change the rule that a tax should be computed on the mortgage, and separately on the extension agreement even if both are executed on the same day. OAG Sept. 10, 1945 (418-B-13).

An instrument whereby the grantor charges the land conveyed with the payment of a certain sum to a third party after the death of the grantor is a mortgage and subject to a mortgage registration tax. OAG June 11, 1946 (418-B-5).

287.06 EXEMPTION FROM OTHER TAXES.

A mortgage running to certain federal agencies may be accepted for recording without payment of the mortgage registration tax, as illustrated by the following: (1) Real estate mortgage given to reconstruction finance corporation. OAG Feb. 1, 1933 (301-C); (2) Mortgages to St. Paul bank for cooperatives, a branch of the farm credit administration. OAG Nov. 15, 1934 (373-B-16); (3) Mortgages executed under the federal home owners loan act of 1933. 1934 OAG 816, 819; (4) Purchase money mortgage to joint stock land bank. OAG Jan. 3, 1936 (418-A-13); May 9, 1938 (418-A-3); (5) Mortgage to the United States. OAG June 15, 1936 (414-A-1); (6) contracts for deed or mortgages running to the state or to the federal land bank. OAG July 7, 1938 (131-D); (7) Where mortgage and debt both run to the United States. OAG Aug. 30, 1938 (418-A-13); (8) A mortgage executed by a Wisconsin power cooperative to secure a loan made by the federal electrification act of 1936. 1940 OAG 321; (9) Mortgages running to Minnesota rural rehabilitation corporation. OAG Nov. 26, 1940 (373-B-16); (10) Mortgages running to federal farm security administration. OAG Dec. 12, 1941 (418-A-13); (11) Mortgage to federal housing administration. OAG July 26, 1945 (418-A-14).

Insured mortgages under the federal housing act are not exempt and must pay the mortgage registration tax. OAG July 9, 1935 (418-B-25).

287.07 MORTGAGES TO SECURE OBLIGATIONS TO BE ISSUED.

Mortgage registration tax is not payable on mortgages running to the state, and where tax has been paid application for refundment may be made through the tax commission. OAG May 9, 1932 (418-A-6).

Section 287.07 is limited to mortgages on property to secure a subsequent issue of bonds or other similar issues. OAG March 6, 1946 (418-C-1).

287.08 TAX, HOW PAYABLE; RECEIPTS.

Payment of the mortgage registry tax on a contract for a deed may be made at any time before the instrument is enforced. Failure to pay the tax does not render the instrument void, but power of enforcement is suspended until the tax is paid. *Kirk v Welch*, 212 M 300, 3 NW(2d) 426.

It being the duty of the county treasurer to collect the registry tax, he should have custody of the receipt books. OAG July 27, 1945 (418-a-11).

287.10 PREPAYMENT OF TAX; EVIDENCE; NOTICE.

Effect of failure to pay mortgage registration tax on validity of statutory notice to terminate interests of vendee. 7 MLR 70.

Payment of mortgage registration tax during course of trial. 7 MLR 250.