

real estate as well as the consideration paid for the model home.

My real estate agent introduced me to a builder and even helped me arrange financing for the real estate and the construction of a home. How is PA realty transfer tax calculated in that situation?

The value of the construction agreement will only be subject to PA realty transfer tax if there is an affiliation between the builder and the seller of the real estate.

What about a construction mortgage?

The existence of a construction mortgage at the time settlement is held on the real estate is presumed by the department to mean a construction contract has been executed.

CONTACT INFORMATION

Online Customer Service Center
www.revenue.state.pa.us

Taxpayer Service & Information Center
Personal Taxes: 717-787-8201
Business Taxes: 717-787-1064
e-Business Center: 717-783-6377

1-888-PATAXES (728-2937)

Touch-tone service is required for this automated, 24-hour toll-free line. Call to order forms or check the status of a personal income tax account, corporate tax account or property tax/rent rebate.

Automated Forms Ordering Message Service
1-800-362-2050

Service for Taxpayers with Special Hearing and/or Speaking Needs
1-800-447-3020

Call or visit your local Department of Revenue district office, listed in the blue pages of local telephone directories.

PA REALTY TRANSFER TAX & NEW HOME CONSTRUCTION



Pennsylvania realty transfer tax is imposed at a rate of 1 percent on the value of real estate (including contracted-for improvements to property) transferred by deed, instrument, long-term lease or other writing. Both grantor and grantee are held jointly and severally liable for payment of the tax.



When is realty transfer tax due?

The 1 percent state realty transfer tax is generally due when a document that transfers title to real estate (as defined by 72 PS Section 8101-C of the Pennsylvania Code) is filed with the County Record of Deeds. Its payment is evidenced by a stamp or impression affixed to the document. A local realty transfer tax of 1 percent (in some localities more) is also due.

I've heard that, under certain circumstances, the value of a construction contract is subject to PA realty transfer tax. What are those circumstances?

The value of an executory construction contract for permanent improvements to real estate is subject to PA realty transfer tax when both of the following conditions apply:

- (1) The construction contract is effective prior to or contemporaneously with the transfer of the title to the real estate; and
- (2) The seller/developer and the builder are affiliated in some way.

The value of the construction contract is taxable whether or not construction has started at the time of settlement on the real estate.

What is an executory construction contract?

An executory contract is a legally enforceable agreement where some or all of the terms of the agreement have yet to be performed. Therefore, an executory construction contract is an agreement for the construction of improvements to real estate where the construction has not yet begun or has not been fully completed.

How can a real estate owner and a builder be "affiliated" so that the value of an executory construction contract is subject to PA realty transfer tax?

An affiliation between the real estate owner and the builder can be created by common ownership or by

agreement. Examples where there is an agreement that causes affiliation include the following:

- (1) An existing contract for the construction of a home between the owner and the builder that is assigned to the purchaser of the real estate;
- (2) Options to purchase or buy real estate given by the real estate owner to the builder;
- (3) Rights of first refusal to buy real estate given by the lot owner to the builder;
- (4) Outright sales agreements for real estate given by the real estate owner to the builder;
- (5) A contract designating the builder as the only builder that can build houses on the owner's real estate;
- (6) An agency agreement whereby the owner acts as an agent for the builder in selling the real estate to a purchaser;
- (7) An agency agreement whereby the builder acts as an agent for the owner who is selling the real estate to the purchaser; and
- (8) A partnership or joint venture agreement between the builder and the owner to develop the real estate.

Examples where common ownership between the owner of real estate and the builder may cause affiliation include, but are not limited to the following:

- (1) The real estate owner or his close relative is a shareholder or a partner with the builder;
- (2) The builder or his close relative is a shareholder or a partner with the owner;
- (3) The owner and builder are owned in whole or in part by the same individuals or entities; and
- (4) The same individual is a common owner, officer or employee acting as an agent for both the owner (developer) and the builder.

What if I enter into a construction contract where the builder and the seller of the real estate are not affiliated?

If there is no affiliation between a builder and the owner, PA realty transfer tax is not due on the value of an executory construction agreement, even if the construction contract is executed prior to the transfer of the real estate.

Who is responsible for the payment of PA realty transfer tax when there is an executory construction contract: the buyer or the owner of the real estate?

Both. PA realty transfer tax is a joint and several liability of both the seller and purchaser. Persons involved in a real estate transaction can enter into an agreement to split the realty transfer tax between the parties any way they like by private agreement; however, the Department of Revenue is not bound by this private agreement.

If an executory construction contract is subject to PA realty transfer tax, why is the builder not also responsible for the payment of the tax?

The builder can only be held liable to the Department of Revenue for the tax on an executory construction contract if the builder is a party to the deed transferring title to the real estate. A buyer of real estate legally could require a builder to pay a portion of any PA realty transfer tax under a private agreement.

How is PA realty transfer tax calculated if I purchase a "model home"?

A model home is usually one built by a builder on real estate in a development as part of the marketing of the development. In many cases the builder will remain the owner of the model home. The builder's ownership of the improvement does not change the fact that the model home is real estate. Consequently, PA realty transfer tax is calculated based on the consideration paid for the