

COMMON EXEMPTIONS TO DOCUMENTARY TRANSFER TAX

R&T = Revenue and Taxation Code

Under the Documentary Transfer Tax Act (California Revenue and Taxation Code §§ 11901-11934), cities and counties may impose a tax on each deed or other recorded instrument transferring real property. There may be additional sales, property, or other tax implications when transferring property.

The Documentary Transfer Tax is imposed on all instruments when the purchase price or value of interest conveyed, less the value of any liens or encumbrances, exceeds \$100. There are two questions to ask when determining if you will need to pay a transfer tax: 1) Was an interest in real estate conveyed?; and 2) Was there consideration for the conveyance? If yes to both, and if the consideration or value exceeds \$100, then transfer tax is due.

Many common recorded instruments do not actually convey real property, or do not include any consideration, so the transfer tax does not apply. Additionally, California Revenue and Taxation Code §§ 11921-11930 provide several exemptions from the tax. The transfer tax is due at the time of recording. If you wish to claim that your transfer is exempt from tax, you must state your exemption by writing the relevant R&T Code section on the face of your instrument in the blank provided. If there is not enough room, it is acceptable (though not preferable) to attach an exhibit describing the exemption. If you do attach an Exhibit, be sure to write "Exhibit A attached" in the space provided for "explanation."

The following common conveyances do not actually convey property, or do not include consideration. Therefore, they do not incurring a transfer tax.

Giving property for no consideration (aka gift)

If the property is transferred without any payment or other consideration to the grantor, and the grantee does not assume any debt or obligation.

"Gift. R&T 11911" OR "This conveyance is a bona fide gift and the grantor received nothing in return. R&T 11911"

Confirming a change of name

If the instrument simply updates the name of the person or entity holding title, but does not change the ownership. A name change upon marriage is a common example.

"This conveyance confirms a change of name and the grantor and grantee are the same party. R&T 11911"

Confirming title in grantee(s) name(s)

If the instrument removes a cloud on the title where the grantor has no interest in the property, such as signing a quit claim deed to release any possible claim to a neighboring property. "This conveyance confirms title to the grantee(s) who continue(s) to hold the same interest

acquired on Date _____, Document no. _____, wherein \$_____ Documentary Transfer Tax was paid. R&T 11911"

Establishing separate property of a spouse

If this instrument establishes the real estate as one spouse's separate property, such as a spouse signing a quitclaim deed to the property.

"This conveyance establishes sole and separate property of a spouse. R&T 11911" OR "It is the express intent of the Grantor, being spouse of Grantee, to convey all right, title and interest of the Grantor, community or otherwise, in and to the herein described property, to the Grantee as his/her sole and separate property. R&T 11911"

Conveyance of an easement or oil and gas lease

If the instrument conveys an easement or oil and gas lease, and consideration or value is less than \$100.

"This is a conveyance of an easement (or oil and gas lease) and the consideration and value is less than \$100. R&T 11911"

Property liened or encumbered to full value

If the value of the property, minus all liens and encumbrances, is less than \$100, and no other consideration is given.

"Liened to full value. R&T 11911" OR "The value of the property in this conveyance, exclusive of liens and encumbrances is \$100 or less, and there is no additional consideration received by the grantor. R&T 11911"

Court ordered conveyances

If the court ordered the conveyance for no consideration (payment). A common example is a court order to partition the property between multiple owners.

"Court-ordered conveyance not pursuant to sale. R&T 11911"

Agent acting for principal

If the grantor is acting as an agent for the grantee and is acting solely in his/her capacity as an agent.

"Agent to principal, funds of the grantee used to purchase the property. R&T 11911" OR "The grantor in this conveyance is acting solely in his/her capacity as agency for the grantee, using the funds of the grantee and receives no consideration. R&T 11911"

Confirming a community property interest when property was purchased with community property funds.

If the instrument is used to confirm the property as community property that was purchased with community property funds.

"This conveyance confirms a community property interest, which was purchased with Community Property Funds. R&T 11911"

Changing manner in which title is held

If the owners and their percentages do not change, such as a change from joint tenancy to community property.

"This conveyance changes the manner in which title is held, grantor(s) and grantee(s) remain the same and continue to hold the same proportionate interest. R&T 11911"

The following common conveyances are specifically exempted from the Documentary Transfer Tax. You may be required to provide supporting documentation if claiming one of these exemptions.

Conveyances to secure a debt

If the instrument is being used by a creditor to secure a debt, such as with a deed of trust or assignment of rents.

“This instrument secures a debt for collateral purposes only. R&T 11921”

Reconveyance upon satisfaction of debt

If the instrument is used to release lender’s interest in the property when the debt is paid in full.

“This is a reconveyance of realty upon satisfaction of a debt. R&T 11921”

Conveyances to governmental agencies

If the instrument conveys the property to a governmental agency, including foreclosing beneficiary FHLMC (Freddie Mac) or FNMA (Fannie Mae).

“Governmental agency acquiring title. R&T 11922”

Conveyance under reorganization or adjustment plan

If the property is transferred as part of a bankruptcy plan.

“Conveyance under bankruptcy, Federal Case No. _____. R&T 11923” OR

“Reorganization/Adjustments plan Federal Case No. _____. R&T 11923”

Conveyance by order of the Securities and Exchange Commission

If the transfer is made by order of the Securities and Exchange Commission.

“Transfer by order of the Securities and Exchange Commission, Case No. _____. R&T 11924”

Conveyance of partnership interest

If the conveyance transfers interest in real property from a partnership to its continuing partnership, and the continuing partnership continues to hold title to the property.

“This is a conveyance from a partnership to a continuing partnership. R&T 11925(a)”

Conveyances to confirm dissolution of a partnership

If the conveyance transfers a business partnership’s interest in a property upon the dissolution of the partnership.

“This conveyance confirms a dissolution or termination of a partnership. R&T 11925(b)”

Conveyances changing the manner in which title is held

If the conveyance is between business entities/sole owners of business entities, and all proportional interest, whether represented by stock, membership, partnership, or co-tenancy remain the same immediately before and after the transfer. The owners remain the same, but the manner in which the property is held is changed.

“Grantor(s) and grantee(s) are comprised of the same parties, and their proportional interest remains the same immediately following transfer. R&T 11925(d)”

Deed in Lieu of Foreclosure

If the owner signs over the property to the mortgage holder to avoid foreclosure. “Trustees Deed upon sale or Deed in Lieu of Foreclosure. The grantee was/was not the foreclosing beneficiary. The amount of consideration paid by grantee is \$_____. The amount of debt with interest is \$_____. R&T 11926”

Conveyances in dissolution of marriage.

If the property is being transferred between spouses as part of a divorce. “Dissolution of marriage. R&T 11927” OR “This conveyance is in dissolution of marriage by one spouse to the other. R&T 11927”

Conveyances from a non-federal governmental agency

If a non-federal agency conveys the property with the agreement that the purchaser immediately reconvey the property to the agency. The deeds must be recorded at the same time. “Grantor is a non federal government agency. R&T 11928” OR “This is a conveyance by the State or political subdivision, with an agreement for purchaser to immediately reconvey to the agency. R&T 11928”

Conveyances by non-federal government entity to a nonprofit corporation

If a non-federal governmental entity transfers to a nonprofit organization property that was financed by obligations issued by the nonprofit on behalf of a governmental unit. “Grantor is a non-federal government agency, grantee is a non-profit corporation. R&T 11929”

Conveyances transferring grantor’s interest into a revocable living trust

If the deed transfers the property into a living trust “This conveyance transfers an interest into a Living Trust. R&T 11930” OR “Grantee is a Trust for the benefit of the grantors. R&T 11930”

Other types of conveyances may be exempt from the Documentary Transfer Tax. Consult the California Revenue and Taxation Code **§§ 11901-11934** for more information.