

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-93 (4) R
Mortgage Recording
Taxes

1993 Amendments to the Mortgage Recording Taxes

On August 4, 1993, Chapter 613 of the Laws of 1993 was enacted. Chapter 613 amended several laws in relation to reverse mortgage loans, including Article 11 of the Tax Law, the tax on mortgages (the mortgage recording taxes). The purpose of this memorandum is to summarize the provisions of Chapter 613 which affect Article 11.

With respect to Article 11, Chapter 613 adds new subdivision two to section 252-a of the Tax Law to provide that the recording of reverse mortgages, which conform to the provisions of new sections two hundred eighty or two hundred eighty-a of the Real Property Law as added by Chapter 613, are exempt from each mortgage recording tax imposed or authorized to be imposed by Article 11 of the Tax Law. New sections two hundred eighty and two hundred eighty-a of the Real Property Law relate to reverse mortgage loans made to mortgagors 60 years of age or older or 70 years of age or older, respectively.

For purposes of establishing entitlement to this exemption, the following documentation is required to be submitted to the recording officer at the time the reverse mortgage is offered for recording:

- a) for a mortgage made pursuant to the provisions of section two hundred eighty of the Real Property Law, an affidavit, made in duplicate, signed by the mortgagee, setting forth (1) that such mortgage is a reverse mortgage given by a mortgagor or mortgagors who are at least 60 years of age, (2) the mortgage is on real property improved by a one-to-four-family dwelling or condominium unit that is the residence of the mortgagor or mortgagors and (3) such mortgage conforms to all other provisions of section two hundred eighty of the Real Property Law; or
- b) for a mortgage made pursuant to the provisions of section two hundred eighty-a of the Real Property Law, an affidavit, made in duplicate, signed by the mortgagee, setting forth that (1) such mortgage is a reverse mortgage given by a mortgagor or mortgagors who are at least 70 years of age, (2) the mortgage is on real property improved by a one-to-four-family dwelling or condominium unit that is the residence of the mortgagor or mortgagors and (3) such mortgage conforms to all other provisions of section two hundred eighty-a of the Real Property Law.

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Where a reverse mortgage that conforms to the provisions of section two hundred eighty or section two hundred eighty-a of the Real Property Law is presented for recording without the documentation described in a) or b) above being furnished, the mortgage recording taxes will be imposed. However, the principal debt or obligation that is the measure of such taxes shall be the proceeds of the reverse mortgage loan that the lender is obligated to lend the borrower at the time of execution of the reverse mortgage or at any time thereafter but determined without regard to any contingency relating to the addition of any unpaid interest to principal or relating to the lenders' entitlement to a percentage of the future appreciation of the real property.

In addition, Chapter 613 provides that where such a reverse mortgage is recorded without the required documentation, and if subsequent to the recording of such mortgage, the proceeds that the lender is obligated to lend the borrower are increased and an instrument is recorded to evidence the increase, mortgage recording taxes must be paid, measured by the amount of such increase. However, if at the time of the recording of such additional instrument, the documentation described in a) or b) of this memorandum is presented to the recording officer, the recording of the additional instrument will be exempt from the mortgage recording taxes.

Also, Chapter 613 amends subdivision 2 of section 253-b of the Tax Law to provide that for purposes of such section, "credit line mortgage" shall not include a reverse mortgage made pursuant to the provisions of section two hundred eighty or two hundred eighty-a of the Real Property Law.

Effective Date

Chapter 613 takes effect on December 2, 1993 and the provisions relating to Article 11 of the Tax Law shall apply to mortgages recorded on or after such date.