

Eliminating the Two Deed Process

This paper describes recent IRS and Worldwide ERC (Employee Relocation Counsel) rulings with regards to the use of blank deeds when transferring titles.



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With the recent publication of Revenue Ruling 2005-74 in November of 2005, Paragon Relocation Resources, Inc. (Paragon) carefully analyzed the data published by Worldwide Employee Relocation Council (ERC) and the Task Force appointed by ERC's Coalition Public Policy Committee. The ERC findings suggest the use of a blank deed to transfer title in a relocation transaction is consistent with two (2) bona fide, independent sale transactions for federal tax purposes. In light of the new information, Paragon is recommending the use of a blank deed in states/situations where it is appropriate.

Between 1972 and 2001, the industry's primary method utilized to transfer title was one (1) deed, signed in blank by the relocating employee and later completed with the purchaser's name in accordance with ERC's interpretation of Private Letter Ruling 72-339.

Upon further scrutiny of Ruling 72-339 as a result of the Amdahl Case in 2001, ERC concluded the use of two deeds (eliminating the use of the blank deed) in homesale transactions further complied with the intent of IRS Private Letter Ruling 72-339. ERC changed its position, maintaining the use of the two (2) deeds as the preferred methodology.

With the introduction of Revenue Ruling 2005-74, it holds that use of a blank deed complies with a sale having occurred for federal income tax purposes, potentially eliminating the use of two (2) deeds where state law and practices will allow and where the employer (corporation) follows the Worldwide ERC eleven key elements. For Paragon clients involved in homesale closings in 2005, the average cost associated with preparing and recording two (2) was \$1,750 per transaction.

As a result, Paragon recommends the elimination of two (2) deeds in states that do not have the following: notary statutes; false claim laws including Qui Tam; states that do not impose a state transfer tax/fees with transfer of ownership; real estate licensing issues; and states without withholding statutes. Refer to Addendum A for a more detailed explanation. For additional information regarding recommended practices by state, please refer to Addendum B.

According to Worldwide ERC, there are situations where using two (2) deeds remains relevant due to both practical, legal and/or transfer fee/tax reasons. An example of this would be when title is subject to question or challenge due to a pending divorce, bankruptcy or the owners are departing the country. In these cases, Paragon's operations team will analyze the factors present, review the options based on the location (state) of the property, advise the client and make recommendations for each scenario.

Corporations are encouraged to share this information with their tax and legal departments and determine if a change in future practices may be allowed with the new revenue ruling. Additional information may be provided via the Worldwide ERC website www.erc.org under Tax & Legal Mastersource.

Specific Reasons to Use Two Deeds

1. Notary Statutes in states where notary statutes could prevent notarization of an “incomplete” document, although it is debatable since the deed contains the name and signature of the transferee. This could possibly occur in Alaska, Arizona, California, Florida, Michigan and New Mexico.
2. False Claim laws in states with “Qui Tam” statutes where it may be interpreted that transfer taxes or recording fees were avoided by use of a blank deed.
3. Transfer tax or recording laws in states are interpreted and allow a collection of a tax or fee when ownership of record is transferred. This is subject to each state’s interpretations and poses a level of risk if the state or local authorities decide to collect back taxes or fees.
4. Individual state real estate licensing.
5. States requiring payment of taxes if a blank deed is used or the reverse – where a law may not require payment of two taxes even if two deeds are used.
6. Statutes affecting nonresident withholding on the sale of real estate whereby the transferred employee is a nonresident at the time the deed is delivered to either his/her employer or the third party relocation company and if that company is a nonresident, regardless if it takes title or records the deed. These states include:
 - a. California
 - b. Colorado
 - c. Georgia
 - d. Hawaii
 - e. *Maine
 - f. Maryland
 - g. *Mississippi
 - h. New Jersey
 - i. New York
 - j. Rhode Island
 - k. South Carolina
 - l. *Vermont
 - m. Puerto Rico
7. If the property is the seller’s principal place of residence, all states listed above except those noted with an “*” consider the sale exempt.
8. Determining if the transfer tax or recording fee is a seller’s expense and further confirmation if the same would be a taxable expense to the employee for gross-up purposes.

Recommended Practices by State

A. Recommended Use of Two Deeds

1. *Connecticut
2. Delaware
3. Kentucky
4. Maryland
5. Nevada
6. New York
7. Oklahoma
8. [Pennsylvania](#)
9. Texas
10. Washington

*Worldwide ERC states that Connecticut law allows for one tax to be collected in a relocation transaction even if two deeds are used and if the subsequent sale occurs within six months of the first transaction.

B. States With Minimal or No Costs Associated On Conveyance of Two Deeds

Paragon recommends not using two deeds in the following:

1. Alaska
2. Arizona
3. Guam
4. Idaho
5. Guam
6. Indiana
7. Kansas
8. Mississippi
9. Missouri
10. Montana
11. New Mexico
12. North Dakota
13. Puerto Rico
14. Utah
15. Wyoming

For other states not listed, companies should review the factors listed above and seek consultation from their own resources.

About the Author

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Kathy has 26 years of experience creating and managing relocation programs tailored to meet the needs of corporations providing world-class support to employees facing transition challenges. As a veteran Senior Certified Relocation Professional (SCRCP), Kathy has served as an active member of committees for Worldwide ERC and the Texas Relocation Network, has authored articles/editorials published in Mobility and National Relocation and Real Estate, and has participated for more than 15 years as an industry speaker. Kathy earned a BA in Journalism/Public Relations from the University of North Texas.

About Paragon Relocation Resources

Originally founded as a relocation consulting company in 1987 specializing in domestic and international relocation and global assignment program development consulting, Paragon's mission was to develop cost-effective mobility programs that offered more services to the transferring employee, at less cost to the organization. Today, Paragon maintains an extensive consulting practice focused on global mobility issues in their entirety.