

1 State of Arkansas
2 88th General Assembly
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4

As Engrossed: H3/9/11
A Bill

HOUSE BILL 1767

5 By: Representative Barnett
6

7 **For An Act To Be Entitled**

8 AN ACT TO AUTHORIZE THE ESTABLISHMENT OF ALTERNATIVE
9 REAL ESTATE TRANSFER TAX DOCUMENTARY SYMBOLS AND
10 ELECTRONIC AFFIDAVITS OF COMPLIANCE; AND FOR OTHER
11 PURPOSES.
12
13

14 **Subtitle**

15 TO AUTHORIZE THE ESTABLISHMENT OF
16 ALTERNATIVE REAL ESTATE TRANSFER TAX
17 DOCUMENTARY SYMBOLS AND ELECTRONIC
18 AFFIDAVITS OF COMPLIANCE.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 26-60-107 is amended to read as follows:
24 26-60-107. Real Property Transfer Tax Affidavit of Compliance Form.

25 (a)(1) The Director of the Department of Finance and Administration
26 shall design a "Real Property Transfer Tax Affidavit of Compliance" form
27 ~~which shall be in triplicate.~~

28 (2) (A) The form shall contain essentially the information
29 prescribed in this section.

30 (B) *The affidavit portion of the form shall provide ~~space~~*
31 ~~for:~~

- 32 (i) The name and address of the grantor or seller;
33 (ii) The name and address of the grantee or buyer;
34 (iii) The date of the real property transfer as
35 reflected on the transfer instrument;
36 (iv) The name of the county where the property is



1 located;

2 (v) The amount of the full consideration for the
3 transaction or a statement giving the reason the real property transfer tax
4 does not apply to the transaction unless it is clearly evident from the
5 contents of the ~~document~~ instrument to be recorded without reference to any
6 other writing or extrinsic evidence that the instrument is exempt from the
7 real property transfer tax under one (1) of the provisions in § 26-60-102, in
8 which case the county recorder may record the instrument without ~~such an~~ the
9 affidavit. In any case when the county recorder doubts the entitlement to the
10 exemption, the county recorder shall require the affidavit or a
11 certification, setting out the reasons for the exemption in full to be
12 submitted with the instrument prior to recording the instrument; and

13 (vi) The value of the documentary stamps or
14 documentary symbol attached to the face of the instrument.

15 (b)(1) If the real property transfer instrument is for a transfer upon
16 which no tax is due but is not clearly exempt under § 26-60-102, the ~~same~~
17 affidavit under subsection (a) of this section shall provide for stating this
18 fact and shall be signed by the grantee or his or her agent, whose address
19 ~~shall be included in a space provided on the affidavit and be presented with~~
20 the transfer instrument to the county recorder.

21 (2) ~~The director shall furnish a supply of the "Real Property"~~
22 ~~Transfer Tax Affidavit of Compliance" forms to each revenue office in each~~
23 county of this state and may make these forms available to the county
24 recorder or any other interested persons in each county upon request to the
25 director.

26 (3)(A) The grantee or his or her agent shall complete the
27 affidavit, including a statement of the full consideration for ~~such the~~
28 transaction and the amount of tax to be reflected by documentary stamps or a
29 documentary symbol on the face of the instrument.

30 (B) The grantee or his or her agent shall attach the
31 proper number of documentary stamps or the proper documentary symbol to the
32 face of the instrument in such manner that all ~~such~~ documentary stamps or the
33 documentary symbol will be fully visible in the records of the county
34 recorder where the county recorder maintains records by reproducing the
35 ~~document~~ instrument by photographic, photocopy, or other reproductive method.

36 (c)(1) When it is clearly evident from the contents of the instrument

1 without reference to any other writing or extrinsic evidence that the
2 instrument is exempt from the real property transfer tax under one (1) of the
3 provisions in § 26-60-102, the county recorder may record the instrument
4 without requiring the certification allowed as an alternative to the
5 affidavit.

6 (2) If the county recorder doubts the entitlement to the
7 exemption, the county recorder shall require a certification or affidavit
8 setting out the reasons for the exemption in full to be submitted with the
9 instrument prior to recording the instrument.

10 ~~(d)(1)(A) On receipt and recordation of the instrument, the county~~
11 ~~recorder will retain two (2) copies of the affidavit.~~

12 - ~~(B)(i) One (1) copy will be held for the director who will pick~~
13 ~~up the copies at reasonable intervals.~~

14 - - ~~(ii) The second copy will be held for the county assessor~~
15 ~~who will pick up the copies at reasonable intervals.~~

16 - - ~~(iii) The third copy shall be returned to the party filing~~
17 ~~the instrument for record.~~

18 ~~(2)(A) The affidavits in the files of the director will be~~ are public
19 records governed by the same rules ~~and regulations~~ as are applied to the
20 disclosure of motor vehicle titling and registration information.

21 ~~(B)(2) The copies of the affidavit in the hands of the county~~
22 ~~assessor shall be~~ are public records subject to the same laws regarding
23 disclosure as all other taxpayer records of the county assessor.

24 (e)(1) Upon receipt of the instrument, the county recorder shall
25 cancel the documentary stamps or documentary symbol or shall note that the
26 instrument is exempt or that no tax is due on the face of the instrument.

27 (2) The county recorder shall place on the face of the affidavit
28 a file stamp and the book and page or instrument number of the recorded
29 instrument.

30 (f) The director may:

31 (1)(A) Investigate the possibility of replacing or supplementing
32 the paper Real Property Transfer Tax Affidavit of Compliance presently used
33 as proof of compliance with the real property transfer tax with alternative
34 proofs of compliance, including without limitation, electronic affidavits
35 with electronic signatures.

36 (B) The director shall collaborate with attorneys at law,

1 representatives of title companies, county recorders, and other interested
2 parties to recommend an alternative method of providing proof of compliance
3 with the real property transfer tax.

4 (C) If an investigation is undertaken, the director shall
5 complete the investigation by July 1, 2012; and

6 (2)(A) Promulgate rules to implement alternative methods of
7 providing proof of compliance with the real property transfer tax that ensure
8 that the grantee is in full compliance with the law and the use of
9 documentary symbols.

10 (B) Before promulgating any rules, the director shall
11 report the finding of the investigation authorized under subdivision (f)(1)
12 of this section to the Speaker of the House of Representatives and the
13 President Pro Tempore if the General Assembly is in session or to the
14 Legislative Council during an interim.

15
16 SECTION 2. Arkansas Code § 26-60-108 is amended to add a new
17 subsection to read as follows:

18 (g) If authorized by the director, an electronic copy of an affidavit
19 described in this section may be used and retained in the same manner as
20 other electronic documents.

21
22 SECTION 3. Arkansas Code § 26-60-109 is amended to read as follows:

23 26-60-109. Documentary stamps or symbols.

24 (a) The Director of the Department of Finance and Administration
25 shall:

26 (1) ~~design~~ Design documentary stamps or documentary symbols in
27 appropriate denominations; and

28 (2) ~~shall make~~ Make the documentary stamps and documentary
29 symbols available for purchase at offices of the Revenue Division of the
30 Department of Finance and Administration and by consignment arrangement with
31 title companies, banks, and savings and ~~loan~~ loan associations throughout
32 the state.

33 (b) The director may:

34 (1)(A) Investigate the possibility of replacing or supplementing
35 the paper documentary stamps presently used as proof of compliance with the
36 real property transfer tax with alternative proofs of payment, including

1 without limitation ink-based or computer-generated symbols to be placed on
 2 instruments evidencing a transfer of real property.

3 (B) The director shall collaborate with attorneys at law,
 4 representatives of title companies, county recorders, and other interested
 5 parties to recommend possible alternative methods of providing proof of
 6 payment of the real property transfer tax.

7 (C) If an investigation is undertaken, the director shall
 8 complete the investigation by July 1, 2012; and

9 (2)(A) Promulgate rules to implement alternative methods of
 10 providing proof of payment of the real property transfer tax that ensure that
 11 the grantee is in full compliance with the law.

12 (B) Before promulgating any rules, the director shall
 13 report the finding of the investigation authorized under subdivision (f)(1)
 14 of § 26-60-107 to the Speaker of the House of Representatives and the
 15 President Pro Tempore if the General Assembly is in session or to the
 16 Legislative Council during the interim.

17
 18 SECTION 4. Arkansas Code § 26-60-110 is amended to read as follows:
 19 26-60-110. Recordation of deed.

20 ~~(a) It shall be the duty of~~ Before an instrument evidencing a transfer
 21 of real property is accepted by a county recorder for recordation, the
 22 grantee, or buyer, or his or her the agent of the grantee or buyer shall to
 23 furnish proof of payment of tax or proof of an exemption from payment of the
 24 tax as provided required in this chapter before the real estate transfer
 25 instrument may be accepted by the county recorder of deeds for recordation.

26 (b) The county recorder ~~of deeds~~ shall not record any instrument
 27 evidencing a transfer of title subject to this chapter unless:

28 ~~(1)(A) The instrument at the time it is presented for recording~~
 29 ~~shall have~~ has:

30 (i) An attached thereto or be accompanied by an or
 31 accompanying affidavit in the form provided in this chapter, containing the
 32 information required in this chapter, have; and

33 (ii) documentary Documentary stamps or a documentary
 34 symbol attached to the face of the instrument evidencing full payment of the
 35 real property transfer tax on the transaction.

36 (B) The instrument shall contain a notation on its face

1 which shall be recorded as part of the instrument that the affidavit was
2 completed; or

3 (2)(A) In the alternative, the instrument has ~~stamped~~ marked
4 ~~thereon on the instrument~~ or attached ~~thereto to the instrument~~ in a manner
5 ~~which that~~ will cause it to be recorded as a part of the instrument the
6 following statement:

7
8 “I certify under penalty of false swearing that documentary stamps or a
9 documentary symbol in the legally correct amount ~~of documentary stamps have~~
10 has been placed on this instrument”.

11
12 (B) This statement shall be signed by the grantee or his
13 or her agent, and the grantee’s address shall be clearly shown on the
14 instrument.

15 (c) The county recorder ~~of deeds~~ shall not record any instrument
16 ~~whereon on which a~~ documentary stamps stamp are or a documentary symbol is
17 attached in ~~such a~~ manner that the amount printed on or within each
18 documentary stamp or documentary symbol is not visible.

19
20 SECTION 5. Arkansas Code § 26-60-111(a)(2), concerning filing deeds,
21 is amended to read as follows:

22 (2) In addition to such fine and penalties, the affidavit and
23 certification provided for by this chapter ~~is~~ are declared to be a return
24 within the meaning of the Arkansas Tax Procedure Act, § 26-18-101 et seq.,
25 and the purchase of documentary stamps or a documentary symbol is the payment
26 of the tax due on the return, and the person required to furnish proof of
27 payment ~~shall be~~ is a taxpayer within the meaning of the Arkansas Tax
28 Procedure Act, § 26-18-101 et seq.

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30 /s/Barnett

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33 **APPROVED: 03/24/2011**