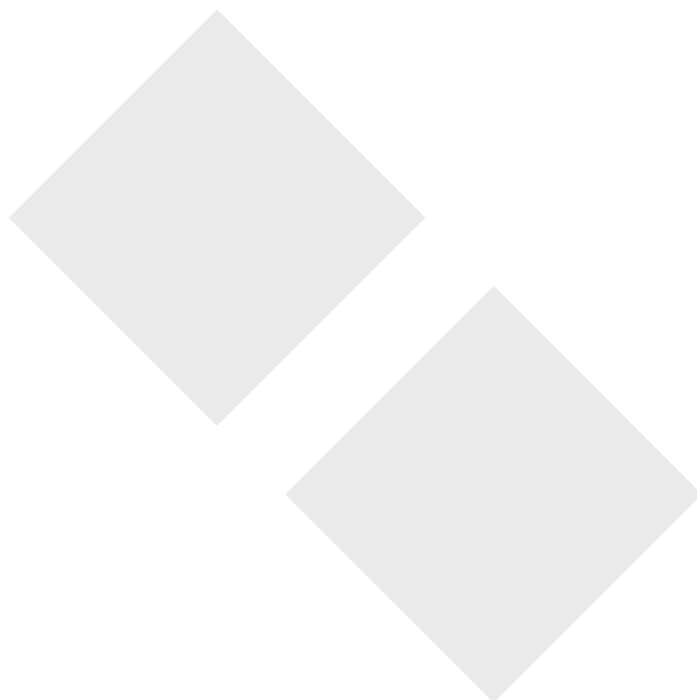


# "Minnesota Nice" Real Estate Transactions: Taxes, Recording, and Documentation

John M. Schmid and Caroline A. Simonson  
*Moss & Barnett Advocate (Fall 2023/Winter 2024 edition)*  
02.26.2024

Like each other state in the nation, Minnesota has its own quirks when it comes to real estate transactions. True to our "Minnesota nice" nature, our real estate team often assists out-of-state sellers, purchasers, lenders, and attorneys navigate these state-specific requirements, to ensure each deal goes as smoothly as possible. Below are some of the most common Minnesota-specific issues we see in our practice:



## 1) Deed Tax:

Minnesota imposes a tax on the recording of deeds and certain other instruments that convey title to real property in the state. Payment of deed tax is a seller cost and a condition to recording, and must either be stated on the deed or instrument or an exemption must be stated. Deed tax where the purchase price, minus the amount of liens that survive the conveyance, exceeds \$3,000 is currently calculated at .0033 of the net amount (.0034 in Hennepin and Ramsey Counties). If such net amount is \$3,000 or less, a minimum deed tax of \$1.65 (\$1.70 in Hennepin and Ramsey Counties) is imposed instead. Minnesota also requires an electronic certificate of real estate value ("eCRV") to be e-filed with the state department of revenue for any conveyances above the minimum deed tax threshold. An eCRV is also required for contracts for deed (discussed at 7 in this article) above the same threshold, though contracts for deed are not themselves subject to deed tax; rather, the deed given once the contract is completed is subject to the tax. Lastly, some types of conveyances, including between related entities or in connection with mergers of business entities, are exempt from deed tax and eCRV altogether, and instead are only assessed the minimum deed tax amount.

## 2) Mortgage Registry Tax:

Minnesota also imposes a tax on the recording of most mortgages encumbering real property in the state, called the mortgage registry tax ("MRT"). Payment of MRT is a borrower cost and a condition to recording and, significantly, must be fully paid in order to fully enforce a mortgage. MRT is currently .0023 (.0024 in Hennepin and Ramsey Counties) of the debt or portion of a debt that is secured by such mortgage. If the mortgage secures a revolving line of credit, MRT is payable on the maximum amount of the line of credit, even if the full amount is never advanced. No MRT is payable for a mortgage amendment or extension that alters a mortgage without securing a new debt or increasing the amount of the existing debt. If the amount of an existing debt is increased, additional MRT is payable only on the amount which exceeds the then-outstanding principal balance. Purchasing, amending, and restating an existing mortgage loan may result in substantial MRT savings to the borrower; however,

it will also increase legal and other transaction costs, and so a cost-benefit perspective should be considered before deciding whether to amend-and-restate in Minnesota. MRT is not payable with respect to any indeterminate future advances that may be secured by the mortgage; however, if such amounts are later set forth in a recorded instrument, MRT will be due on such amounts at that time. If the mortgaged property is partially in Minnesota and partially out-of-state, MRT is only due on the amount of debt as stated in the mortgage to be secured by the Minnesota property. Lastly, if the mortgaged property is located in multiple Minnesota counties, MRT is paid in full on the first recording in the first county and does not need to be paid on subsequent recordings in other counties. Depending on the particular circumstances, certain legends and prescribed language are required by the MRT statutes to be added to the mortgage, and other customary MRT language is usually included within the mortgage to ensure MRT is appropriately addressed. Our firm is often called upon to resolve issues and questions relating to MRT.

### 3) Abstract Versus Torrens:

Minnesota has two land title and recording systems. The first, and the default system across the state, is the "abstract" system in which documents are recorded with a county recorder. The second is the "Torrens" system in which documents are filed with a county registrar of title. Each Torrens property has a certificate of title which is conclusive proof of ownership, whereas abstract property ownership is determined by an examination of the chain of prior owners and other recorded interest holders. A Torrens certificate of title is subject only to seven standard statutory exceptions and any "Memorials" stated thereupon, so any subsequent liens, encumbrances, and interests need to be registered upon a Torrens certificate as and when they arise. For example, one of the standard statutory exceptions to Torrens title is any lease for a term not exceeding three years; so any lease for a term of three years or more should be registered upon the Torrens certificate to ensure public notice thereof. If a property is not registered as Torrens property, it is unregistered abstract property. Owners may convert abstract property to Torrens through a process called registration of title, either with or without court involvement. It is crucial that recordable transaction documents be recorded in the

correct system. If a property is part abstract and part Torrens, documents must be recorded with both the county recorder and the county registrar, and if any part of a property is Torrens but documents are not filed with a county registrar, such recording is ineffective to give public notice. In Minnesota, typically the legal description of a property will denote "abstract" or "Torrens," but if not, our office can assist with such determination and how to place documents correctly of record in any Minnesota county.

#### 4) Mortgages:

Minnesota is a mortgage state, not a deed of trust state. In addition to MRT (discussed at 2 in this article), Minnesota mortgages should address a handful of other state-specific issues. First, Minnesota mortgages should clearly state the maturity date of the debt secured because if a maturity date is not specified, the 15-year statute of limitations for foreclosure commences as of the date of the mortgage, rather than the maturity date. Second, if a mortgage secures a revolving line of credit, the maximum principal amount that may be advanced should be stated because even if the maximum is not advanced, such mortgage is effective as public notice for the stated maximum amount. Third, if the lender wants the option to foreclose non-judicially, also referred to as foreclosure "by advertisement," the mortgage must contain an acceptable power-of-sale clause (though mortgages may also be judicially foreclosed in Minnesota). Fourth, for commercial projects, the borrower should be required to waive the homestead exemption, to ensure that the mortgage can be fully enforced against the property and all improvements located thereon. Fifth, the mortgage should state that the property is not used for agricultural purposes because farmland is entitled to a longer redemption period in Minnesota, and foreclosure of farmland is subject to Minnesota's strict farmer-lender mediation requirements. Lastly, in Minnesota, a recorded mortgage will constitute a financing statement filed as a fixture filing under Article 9 of the Uniform Commercial Code ("UCC"), and no separate financing statement will need to be recorded, provided the mortgage includes the required information as set forth in the UCC. Our office routinely reviews mortgage instruments for synchronization with Minnesota-specific requirements, and we are available to help review your mortgage

forms as well.

#### **5) Assignments of Rents and Limited Receivers:**

Pursuant to Minnesota statutes, assignments of rents and profits generated by mortgaged real property are enforceable for most income-producing properties and can be and often are included in the mortgage instrument, though they may be in a separate recorded instrument. In 2012, Minnesota's receivership statutes were overhauled to permit a limited receiver to be appointed at any time after commencement of foreclosure to collect such rents and profits and apply them first in a specific order, and thereafter pursuant to the terms of the assignment. A well-drafted assignment will, on the one hand, incorporate and follow such statutes and, on the other hand, provide further and specific guidance as to how and to whom any remaining amounts should be paid. An assignment remains effective during foreclosure and throughout any redemption period following a foreclosure sale, even if all or part of the mortgage debt was extinguished, but only to the extent necessary to pay ongoing expenses of the property. We are available to review whether an instrument's assignment of rents and receivership provisions conform to these unique Minnesota requirements.

#### **6) Purchase Agreement Cancellation:**

Unless both parties voluntarily agree to cancel a purchase agreement for real property, Minnesota statutes establish a formal process required to cancel such agreements, which process cannot be waived. For non-residential projects, if a seller desires to cancel a purchase agreement for an uncured buyer default, then the seller must personally serve upon the buyer a notice specifying such default and providing a 30-day notice and cure period (or longer period if required by the agreement). Service of such cancellation notice must be made in the same manner as a court proceeding, though in limited circumstances where the buyer is not able to be personally served, the seller may publish its notice in a legal newspaper for 90 days provided that any occupant of the project is also personally served within 30 days of the publication. For residential projects (defined as one to four families), the formal process to cancel a purchase

agreement is available to both seller and buyer along the same lines as above, except that cancellation occurs either after a 15-day notice and cure period, or after a 15-day period with no cure option (also known as a “declaratory” cancellation, which can only be overcome by court order). Also, for residential projects, any earnest money held under a cancelled purchase agreement is paid to the party completing the cancellation, regardless of any contrary provision in the agreement. For both non-residential and residential cancellations, the statutes provide the specific forms of cancellation notices, and failure to abide by the statutes may result in a purchase agreement not being legally terminated, which could have costly consequences. Our office can assist with ensuring that all the various formalities of purchase agreement cancellation are fully satisfied.

#### 7) Contracts for Deed and Cancellation:

While less common than they once were, we still encounter a fair number of contracts for deed as a means to convey Minnesota real property, particularly in connection with estate planning. In a contract for deed (known in other states as “installment contracts” or “conditional sales”), the seller retains fee ownership of the property as security for the buyer’s installments of the purchase price, usually with interest, paid over time. When the contract for deed is paid in full, the seller transfers the property to the buyer. Neither deed tax nor mortgage registry tax (discussed at 1 and 2 in this article) apply to a contract for deed, and the general practice is to record all contracts for deed. If a buyer defaults on a contract, Minnesota permits the seller to cancel the contract, remove buyer from possession, and retain all payments previously made, much like foreclosure of a mortgage under power of sale and without judicial involvement. However, the same statutory process to cancel purchase agreements (discussed at 6 in this article) is also required to cancel contracts for deed, albeit with a few key differences: first, there is a 60-day notice and cure period (or longer period if required by the contract); second, it is general practice (though not required) to record the contract cancellation notice because such recording is deemed by statute to be prima facie evidence of cancellation; and third, if the contract affects farmland, Minnesota’s strict farmer-lender mediation requirements apply. Also, if a property is Torrens, an additional proceeding is

generally undertaken to clear the cancelled contract from the certificate of title, and after five years a cancelled contract can be removed from the certificate solely by examiner's directive. Lastly, in 2021, Minnesota expanded certain protections for mortgage borrowers to include contract for deed buyers regarding "consultant" or "solicitor" scams, though this should not impact a seller's statutory cancellation process. As with purchase agreements, failure to abide by the statutes may result in a contract not being legally terminated. Our office can assist with all aspects of a contract for deed transaction, from preparation and recording through completion or cancellation.

#### **8) Uniform Conveyancing Blanks ("UCBs"):**

Minnesota's commerce department provides on its website, available to the public, uniform blank forms of deeds, mortgages, contracts for deed, cancellations (including those discussed above), and other various instruments, notices, and affidavits. The commerce department has approved and recommended use of these UCBs in Minnesota, and all county recorders or registrars are familiar with and will accept the UCBs for recording purposes, provided the UCBs are not altered other than filling in blanks and checkboxes. This is a good resource for out-of-state practitioners, but it is still best practice to have an attorney review any documents prepared utilizing the UCBs, to confirm such documents satisfy any other state-specific requirements such as those discussed above.

*Our Real Estate team is here to assist you with any real estate needs or questions you may have.*

#### **Attorneys**

John M. Schmid

Caroline A. Simonson

#### **Practice Areas**

Real Estate