CORPORATE CHARTER APPROVAL SHEET
** KEEP WITH DOCUMENT **

DOCUMENT CODE TC1 BUSINESS CODE ______

16-13-00983595

Close ______ Stock ______ Nonstock ______

P.A. ______ Religious ______

Merging (Transferor) ______

1000361998377547

ID # 00000039 ACK # 1000361998377547
PAGES: 0021
HOME PROPERTIES WESTCHESTER WEST, LLC

07/17/2009 AT 01:32 P WO # 0001749040

Surviving (Transferee) ______

New Name ______

FEES REMITTED

Base Fee: 20
Org. & Cap. Fee: ______
Expedite Fee: ______
Penalty: ______
State Recordation Tax: ______
State Transfer Tax: ______
______ Certified Copies
Copy Fee: ______
______ Certificates
Certificate of Status Fee: ______
Personal Property Filings: ______
Mail Processing Fee: ______
Other: ______

TOTAL FEES: 20

______ Change of Name
______ Change of Principal Office
______ Change of Resident Agent
______ Change of Resident Agent Address
______ Resignation of Resident Agent
______ Designation of Resident Agent and Resident Agent's Address
______ Change of Business Code
______ Adoption of Assumed Name
______ Other Change(s)

Credit Card ______ Check X Cash ______

______ Documents on ______ Checks

Approved By: A-01

Keyed By: ______

COMMENT(S):

permissive filing
$20 coming later

Code 032

Attention: ______

Mail: Name and Address

GORDON, FEINBLATT, ROTHMAN HOFFBERGER &
1200 GARRETT BLDG.
233 E. REDWOOD STREET
BALTIMORE MD 21202-3332

Stamp Work Order and Customer Number HERE

CUST ID:0002306002
WORK ORDER:0001749040
DATE:07-17-2009 01:32 PM
AMT. PAID:$0.00

Maryland State Department of Assessments & Taxation

Office Use Only

REPORT OF TRANSFER OF CONTROLLING INTEREST

(Please read the instructions below before completing this form)

1. Type of filing: ☑ Regular ☐ Permissive

2. Date of final transfer: 1/30/2009

3. Name of Real Property Entity whose interest is being transferred: Home Properties Westchester West, LLC

4. Mailing address for Real Property Entity: 850 Clinton Square, Rochester, New York 14604

5. Type of Real Property Entity: ☐ Corp ☑ LLC ☐ LP ☐ GP or Joint Venture ☐ Unincorporated REIT ☐ Other-specify________

6. State of formation: Maryland

7. Total consideration for the controlling interest being transferred: $ 0.00

8. List below the value attributable to each of the following assets:

a) Maryland Real Property	$ 49,500,000.00
b) Non-Maryland Real Property	$ 0.00
c) Cash	$ 0.00
d) Securities	$ 0.00
e) Maryland Tangible Personal Property*	$ 0.00

*Provide SDAT personal property account # for each return:

f) Non-Maryland Tangible Personal Property	$ 0.00
g) Other: Attach description and method of valuation	$ 0.00

9. Gross value of Real Property Entity assets: $ 49,500,000.00

CUST ID:0002306002
WORK ORDER:0001749040
DATE:07-17-2009 01:33 PM
AMT. PAID:$0.00

Maryland State Department of Assessments & Taxation

10. Real property in Maryland directly or beneficially owned by the Real Property Entity:

Parcel 1:

County Name	SDAT Account No.	Address or brief description
Montgomery	See Attached	3212 Hewitt Avenue, Silver Spring, MD 20906

Description of building/improvements: 345 unit multifamily rental

Title holder if different from Item 3 above: N/A

Consideration attributable to the parcel: $ 49,500,000.00 Total; no allocation

Parcel 2:*

County Name	SDAT Account No.	Address or brief description

Description of building/improvements: ______

Title holder if different from Item 3 above: ______

Consideration attributable to the parcel: $______

*If more than two parcels, attach a separate sheet and indicate total number of parcels: ______

11. Specify and explain any exemptions authorized by law being claimed with this filing:
(Attach a separate sheet if more space is required). See attached.

12. Transfer and Recordation taxes paid with this filing:

Item 7 amount: $ 0 x 49,500,000 (Item 8a amount) = $ 0 (Total amount) x ______ (Co. Rate) = $ 0 (Co. Recordation)

Item 9 amount: $ 49,500,000 $ 0 (Total amount) x 0.5% (St. Rate) = $ 0 (State Transfer)

$ 0 (Total amount) x ______ (Co. Rate) = $ 0 (Co. Transfer)

Total Taxes $ 0

Add the **$20 filing fee** to the amount of the total taxes and make the check payable to the State Department of Assessments & Taxation.

13. I hereby declare under the penalties of perjury, pursuant to § 1-201 of the Maryland Tax-Property Code Annotated, that this filing (including any accompanying forms and attachments) has been examined by me and the information contain herein, to the best of my knowledge and belief, is true, correct and complete, that I am authorized to make this filing on behalf of the Real Property Entity, that I have accurately reported the percentage of controlling interest being transferred, that I have fully reported the consideration attributable to Maryland Real Property, and that I have answered truthfully each item of information requested on the form.

______ 2/2/09
Signature of authorized filer Date
Kathleen E. Suher

Maryland State Department of Assessments & Taxation

14.) Contact Information for this filing:

Y. Jeffrey Spatz	(410) 576-4124
Name	Telephone

Gordon, Feinblatt et al., 233 E. Redwood Street	Baltimore	MD	21202
Address	City	State	Zip code

Attachment to Report of Transfer of Controlling Interest

List of Tax IDs:

Tax ID #: 13-1-983620

Tax ID #: 13-1-983618

Tax ID #: 13-1-983664

Tax ID #: 13-1-983631

Tax ID #: 13-1-983642

Tax ID #: 13-1-983653

The transfer of a controlling interest in Home Properties Westchester West, LLC ("Company") from Stile Holding, Inc., as exchange accommodation title holder ("EAT") to Home Properties, L.P. ("Home Properties") on February 2, 2009 is exempt from Maryland state and local recordation and transfer taxes because this transfer was from a straw man to the beneficial owner of the Company. 49 Op.Att'y Gen. 508 (1964), 42 Op. Att'y Gen. 126 (1957), 24 Op. Att'y Gen. 965 (1939).

This transfer is the last step of a series of transactions that are designed to enable Home Properties to defer recognition of income pursuant to Internal Revenue Code section 1031 and is commonly described as a "reverse like-kind exchange." *See generally*, Rev. Proc. 2000-37, 2000-2 C.B. 308. The improved real property that is owned by the Company was purchased by the Company from BRI Westchester Limited Partnership on December 30, 2008 and the Company paid the full Maryland state and local recordation taxes upon that sale (see attached recorded deed). At the time of that conveyance, the EAT held a 100% membership interest in the Company for the benefit of Home Properties. The EAT transferred its 100% membership interest in the Company to Home Properties on February 2, 2009 to close out the like-kind exchange and end the straw man ownership.

A similar transaction was ruled as exempt from recordation and transfer taxes in an opinion drafted by Bruce Benshoof, Assistant Attorney General in his letter dated October 24, 2004 ("Benshoof Letter"). Enclosed please find a copy of the Benshoof Letter. The Benshoof Letter addresses a situation where the actual property (not membership interests) was transferred from a straw man to the beneficial owner as the last part of a reverse like-kind exchange. In the Benshoof Letter, it clearly spells out that the transfer of property (in this case it would apply to the transfer of membership interests) shall be deemed to be a transfer with no consideration when conveying the replacement property from the qualified intermediary to the taxpayer. This is due to the qualified intermediary merely being a "nominee" or "straw man", holding the replacement property for the benefit of the taxpayer. Due to this transfer merely being a transfer of legal title to the true beneficial owner, it should be exempt from any transfer or recordation tax under Maryland Code, Tax Property, Section 12-117 and 13-103.

Under the new controlling interest law, Tax Property Code Section 12-117(c), "a controlling interest in a real property entity is not subject to recordation tax if the transfer of the real property by an instrument of writing between the same parties and under the same circumstances would have been exempt under Section 12-108 of this title". Pursuant to the Benshoof Letter and current Maryland law, a transfer from a qualified intermediary to the taxpayer for whom the property was held by such qualified intermediary would be exempt. In our situation the transfer if performed as a conveyance by deed would be exempt. As such the transfer of controlling interest may not be taxed. It is, therefore, clear that the transfer of the membership interests in the Company to Home Properties is exempt under from any transfer taxes.

07/07/2009 13:41 FAX 4105764032 GORDON_FEINBLATT 021/035

36360 330

1 of 8

RETURN TO:

~~[illegible]~~
~~[illegible]~~
~~[illegible]~~
~~[illegible]~~

Ward and Klein, Chartered
2275 Research Blvd., Suite 720
Rockville, Maryland 20850
File No. 14941TG08

Tax I.D.:
13-983653
13-983642
13-983631
13-983664
13-983618
13-983620

FILED
LORETTA E. KNIGHT
CLERK'S OFFICE
MONTGOMERY CO. MD.

2008 DEC 31 P 12:27

MONTGOMERY COUNTY, MD
APPROVED BY [illegible]
DEC 31 2008
$ 495450.00 RECORDATION TAX PAID
$ 495000.00 TRANSFER TAX PAID

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED (this "Deed") is made as of December 30th, 2008 by **BRI WESTCHESTER LIMITED PARTNERSHIP**, a Maryland limited partnership, formerly known as Westchester West No. 2 Limited Partnership ("Grantor") having an address at c/o Berkshire Property Advisors, L.L.C., One Beacon Street, Suite 1500, Boston, Massachusetts 02108, to and in favor of **HOME PROPERTIES WESTCHESTER WEST, LLC**, a Maryland limited liability company ("Grantee") having an address at c/o Home Properties, L.P., 850 Clinton Square, Rochester, New York 14604.

A. By executing this Deed, Grantor does certify under penalties of perjury that Grantor is a Maryland limited partnership and a resident entity under Section 10-912(a)of the Tax-General Article of the Annotated Code of Maryland, and is exempt from the "total payment" reporting requirements set forth in Section 10-912(b) of the Tax General Article of the Annotated Code of Maryland.

WITNESSETH:

THAT FOR and in consideration of the sum of Forty Nine Million Five Hundred Thousand and 00/100 Dollars ($49,500,000.00), cash in hand paid, the receipt, adequacy and sufficiency of which are hereby acknowledged by Grantor, Grantor by these presents does hereby grant, bargain, sell and convey unto Grantee, its successors and assigns, to have and to hold in fee simple, that certain parcel of real property lying and being situate in Silver Spring, Maryland (the "Property"), having the following street addresses: 3100 Hewitt Avenue, Silver Spring, Maryland 20906; 4208 Hewitt Avenue, Silver Spring, Maryland 20906; 3166 Hewitt Avenue, Silver Spring, Maryland 20906 and 3020 Hewitt Avenue, Silver Spring, Maryland 20906, as the same is legally and particularly described in Exhibit A attached hereto and incorporated herein by this reference, located on Hewitt Avenue in Silver Spring, Maryland. The Property conveyed hereby includes without limitation all buildings, structures, improvements, and fixtures located on, under or above the Property.

TOGETHER WITH all of the ways, easements, rights, covenants, benefits, rights-of-ways, agreements, privileges, and appurtenances to the same belonging, enjoyed by, or in any way benefiting or appertaining; all rights of Grantor in and to any and all adjoining public and private streets, roadways, and rights of way, and any privately owned water and sewer lines serving the Property; and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of Grantor of, in, to or out of the Property.

247500.00
20
20

IMP FD SURE	20.00
RECORDING FEE	20.00
TR TAX STATE	247,500.00
TOTAL	247,540.00
Rest MO07	Rcpt # 87205
LEK BBH	Blk # 6545
Dec 31, 2008	12:28 PM

A/72757831.3

SUBJECT to the matters of record in Montgomery County, Maryland identified on Exhibit B attached hereto and incorporated herein by this reference, to the extent the same by their terms affect the Property on this date, Grantor covenants that it will warrant specially unto Grantee the Property hereby conveyed, and that Grantor will execute such further assurances of the Property hereby conveyed as may be requisite.

TO HAVE AND TO HOLD the Property, and all rights, privileges and interests conveyed hereby, to the Grantee, its successors and assigns, in fee simple forever.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed and delivered by its authorized representative under seal as its free act and deed for the uses and purposes herein contained as of the day and year first-above written.

WITNESS:

Catherine Smith

GRANTOR:

BRI WESTCHESTER LIMITED PARTNERSHIP, a Maryland limited partnership

By: BIR Westchester, L.L.C., a Delaware limited liability company, its general partner

By: D. C. Quade
Name: David C. Quade
Title: President

Commonwealth of Massachusetts
~~DISTRICT OF COLUMBIA~~)to-wit:
Suffolk County

Before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared this 23rd day of December, 2008, David C. Quade, personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing and annexed Instrument, who, being by me first duly sworn, did depose and state that he is the President of BIR Westchester, L.L.C., a Delaware limited liability company, which is the general partner of BRI Westchester Limited Partnership, a Maryland limited partnership which entity is a party to the foregoing and annexed Instrument, and that he, being duly authorized so to do, executed said Instrument on behalf of said entity in his authorized capacity(ies), and that by his signature on the foregoing and annexed Instrument, the entity upon behalf of which he acted, executed the Instrument as its free act and deed for the uses and purposes therein contained.

WITNESS my hand and official seal this 23rd day of December, 2008.

Tracy Kirk
Notary Public

[Notarial Seal]

My Commission Expires:

TRACY S. KIRK
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 12, 2011

LIST OF EXHIBITS

Exhibit A - Legal Description of Property
Exhibit B – List of Exceptions to Title

36360 333

In accordance with Section 3-104(f) of the Real Property Article, Annotated Code of Maryland, as amended, I hereby certify that I am an attorney admitted to practice before the Court of Appeals of Maryland and that the attached Instrument was prepared either by me or under my supervision.

Lauren R. Goodman
Lauren R. Goodman

Name and Address of Grantor:
BRI Westchester Limited Partnership
c/o Berkshire Property Advisors, L.L.C.
One Beacon Street, Suite 1500
Boston, Massachusetts 02108

EXHIBIT A

LEGAL DESCRIPTION

Parcel 1:

Lot Sixteen (16) in Block "B" in a subdivision known as "HERMITAGE PARK" as per plat thereof recorded in Plat Book 86 at plat 9036, among the Land Records of Montgomery County, Maryland.

TOGETHER WITH rights created under that certain Deed and Agreement to Establish Easements in Common recorded in Liber 4030 at folio 175 and re-recorded to correct legal description in Liber 4162 at folio 448 and subsequently re-recorded to correct legal description in Liber 4539 at folio 426; as amended by Amendment to Deed and Agreement to Establish Easements in Common dated September 5, 2000 by and between Westchester West Condominium, the BRI Westchester Limited Partnership and the Westchester West Limited Partnership, recorded in Liber 18790, folio 399.

Parcel 2:

Lot Seventeen (17) in Block "B" in a subdivision known as "HERMITAGE PARK," as per plat thereof recorded in Plat Book 87 at plat 9218 among the Land Records of Montgomery County, Maryland.

TOGETHER WITH rights created under that certain Deed and Agreement to Establish Easements in Common recorded in Liber 4030 at folio 175 and re-recorded to correct legal description in Liber 4162 at folio 448 and subsequently re-recorded to correct legal description in Liber 4539 at folio 426; as amended by Amendment to Deed and Agreement to Establish Easements in Common dated September 5, 2000 by and between Westchester West Condominium, the BRI Westchester Limited Partnership and the Westchester West Limited Partnership, recorded in Liber 18790, folio 399.

Parcel 3:

Lot Eighteen (18) in Block "A" and Lot Three (3) in Block "C" in a subdivision known as "HERMITAGE PARK," as per plat thereof recorded in Plat Book 87 at plat 9315 among the Land Records of Montgomery County, Maryland.

TOGETHER WITH rights created under that certain Deed and Agreement to Establish Easements in Common recorded in Liber 4030 at folio 175 and re-recorded to correct legal description in Liber 4162 at folio 448 and subsequently re-recorded to correct legal description in Liber 4539 at folio 426; as amended by Amendment to Deed and Agreement to Establish Easements in Common dated September 5, 2000 by and between Westchester West Condominium, the BRI Westchester Limited Partnership and the Westchester West Limited Partnership, recorded in Liber 18790, folio 399.

Parcel 4:

Lot Eighteen (18) in Block "B" and Lot Six (6) in Block "D" in a subdivision known as "HERMITAGE PARK," as per plat thereof recorded in Plat Book 87 at plat 9315 among the Land Records of Montgomery County, Maryland.

TOGETHER WITH rights created under that certain Deed and Agreement to Establish Easements in Common recorded in Liber 4030 at folio 175 and re-recorded to correct legal description in Liber 4162 at folio 448 and subsequently re-recorded to correct legal description in Liber 4539 at folio 426; as amended by Amendment to Deed and Agreement to Establish Easements in Common dated September 5, 2000 by and between Westchester West Condominium, the BRI Westchester Limited Partnership and the Westchester Wet Limited Partnership, recorded in Liber 18790, folio 399.

EXHIBIT B

PERMITTED EXCEPTIONS

1. The following matters as shown on the plat(s) referred to in Exhibit A hereof as recorded in Plat Book 86, Plat No. 9036; Plat Book 87, Plat No. 9218; and Plat Book 87, Plat No. 9315; including the following

   (a) Minimum building restriction lines and 25-foot temporary slope easements established by Owner's Dedication (Affects all Parcels); and

   (b) 25' foot storm drain easement (affects Lot 3, Block C); 20' foot storm drain easement (affects Lot 18, Block B) and 20' foot right of way for sanitary sewer (affects Lot 18, Block A) established per Owner's Dedication (for Plat 87 at 9315 only)

2. Covenant not to subdivide parcels until separate sewer and water house connections are provided pursuant to the following Agreements made by Westchester West No. 2 Limited partnership to Washington Suburban Sanitary Commission:

   (a) dated September 16, 1968, recorded September 17, 1968, in Liber 3790, folio 79 (affects Lot 16, Block B);

   (b) dated July 14, 1969, and recorded July 14, 1969, in Liber 3883, folio 62 (affects Lot 17, Block B);

   (c) recorded July 14, 1969, in Liber 3883, folio 65 and recorded July 14, 1969, in Liber 3915, folio 369 (affects Lots 18, Block A, Lot 18, Block B, Lot 3, Block C and Lot 6, Block D); and

   (d) recorded November 9, 1970, in Liber 4016, folio 390 (affects Lot 18, Block A and Lot 3, Block C).

3. Water easements conveyed to Washington Suburban Sanitary Commission as follows:

   (a) 20'foot and 6' foot easements granted pursuant to Right of Way dated January 6, 1969 and recorded in Liber 3823, folio 466 (Affects Lot 16, Block B).

   (b) 20' foot easement granted pursuant to Right of Way recorded in Liber 3886, folio 743 (Affects Lot 18, Block A); and

   (c) 20' foot easement granted pursuant to Right of Way recorded in Liber 3886, folio 748 (Affects Lot 17, Block B).

4. Covenants and conditions contained in, and access easements granted pursuant to, Deed and Agreement to Establish Easements in Common dated September 5, 1969 and recorded September 24, 1969, in Liber 3904, folio 274; as amended by Amendment to deed and Agreement to Establish Easements in Common recorded in Liber 12310, folio 441.

5. Covenants and conditions and 8' foot wide easements located on the land established pursuant to Deed and Agreement to Establish Easements in Common for the use of the recreational facilities for the benefit of Lots 14, and 15, Block B, dated November 30, 1970, as recorded in Liber 4030, folio 175, re-recorded in Liber 4162, page 448 and re-recorded in Liber 4539, folio 426 to correct the legal description, as amended by Amendment to Deed and Agreement to Establish Easements in Common dated September 5, 2000 by and between Westchester West Condominium, the BRI Westchester Limited Partnership and the Westchester West Limited Partnership, recorded in Liber 18790, folio 399.

6. Easement and right of way for gas transmission and distribution facilities granted to Washington Gas Light Company by Deed of Easement dated August 10, 1972, as recorded in Liber 4257, folio 443 (Affects Lot 16, Block B).

7. Covenants and conditions to establish allocation of water service fees between Westchester West Limited Partnership and Westchester West No. 2 Limited Partnership pursuant to Agreement dated December 13, 1996, as recorded in Liber 14595, folio 610.

8. Rights of tenants under unrecorded residential leases.

9. Taxes for the fiscal year 2009, a lien not yet due and payable.

36360 330

2008
MARYLAND
FORM

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor

BRI Westchester Limited Partnership, a Maryland limited partnership

2. Reasons for Exemption

Resident Status	☐ I, Transferor, am a resident of the State of Maryland. ☑ Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.
Principal Residence	☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

Name

Signature

3b. Entity Transferors

Witness/Attest

BRI Westchester Limited Partnership
Name of Entity

By BIR Westchester L.L.C., General Partner

By: [signature]
Name

David C. Quade, President
Title

36360 339

State of Maryland Land Instrument Intake Sheet

[ ] City [X] County: Montgomery

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation, and the County Finance Office only.

(Type or Print in Black Ink Only All Copies Must Be Legible)

1 Type(s) of Instruments	X Deed	x IDOT	Other	Other
	X IDOT	Lease		
2 Conveyance Type Check Box	Improved Sale Arms-Length [1]	Unimproved Sale Arms-Length [2]	Multiple Accounts Arms Length [3]	Not an Arms-Length Sale [9]
3 Tax Exemptions (If Applicable) Cite or Explain Authority				

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$49,500,000.00
Any New Mortgage	$25,500,000.00
Balance of Existing Mortgage	$
Other:	$1,000,000.00
Other:	$
Full Cash Value	$.00

5 Fees

	Doc. 1	Doc. 2	
Recording Charge	$ 20.00	$ 475.00	Agent:
Surcharge	$20.	$20.	Tax Bill: (08) Pd
State Recordation Tax	$ 493,480.00	$	
State Transfer Tax	$ 247,500.00	$	C.B. Credit:
County Transfer Tax	$ 495,000.00	$	
Other	$	$	
Other	$	$	Ag. Tax/Other:

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District: 13	Property Tax ID No.	Grantor Liber/Folio		Map		Parcel No.	Var. LOG [1] (5)
Subdivision Name: Bernal... Park		Lot(3a)	Block(3b)	Sect/AR(3c)	Plat Ref.		SqFt/Acreage(4)
Location/Address of Property Being Conveyed (2)							
Other Property Identifiers (if applicable)				Water Meter Account No.			
Residential [X] or Non-Residential [ ]		Fee Simple [X] or Ground Rent [ ]		Amount:			
Partial Conveyance? [ ] Yes [X] No		Description/Amt. of SqFt/Acreage Transferred:					
If Partial Conveyance, List Improvements Conveyed:							

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
BRI Westchester Limited Partnership	Home Properties Westchester West, LLC
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Home Properties Westchester West, LLC	Mark S. Shiembob

New Owner's (Grantee) Mailing Address

850 Clinton Square, Rochester, NY 14604

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)
	Federal Home Loan Mortgage Corporation

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Terrence M. Sullivan

Firm: Ward & Klein Chartered

Address: 2275 Research Blvd., Ste. 720, Rockville, MD 20850

Phone: 240-243-7200

[X] Return to Contact Person

[ ] Hold for Pickup

[ ] Return Address Provided

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

[ ] Yes [x] No Will the property being conveyed be the grantee's principal residence?

[ ] Yes [X] No Does transfer include personal property? If yes, identify:

[x] Yes [ ] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

CLERK'S NOTATION
Document submitted for record in a condition not permitting satisfactory photographic reproduction.

Office of the Attorney General
Courts and Judicial Affairs Division
200 St. Paul Place
Baltimore, Maryland 21202

Phone: (410) 576-7292
Fax: (410) 576-6393
E-Mail: bbenshoof@oag.state.md.us

DATE: 28 October 2004

BY FACSIMILE

To: All Clerks of the Circuit Courts

cc: All Land Records Supervisors

From: Bruce L. Benshoof,
Assistant Attorney General BLB

Re: **Like-Kind and Reverse Like-Kind Exchanges**

As you may recall, in October of 2002, my predecessor, Julia Andrew, advised you that all three (or four) of the deeds involved in a "reverse like-kind exchange" would be subject to recordation and transfer taxes.[1] For the reasons discussed below, such advice is hereby withdrawn and replaced with the following advice.

Under the Internal Revenue Code (the "IRC"), a seller of investment property usually must pay capital gains taxes on the amount by which the amount received for such sale exceeds the seller's "basis" in such property. However, under § 1031 of the IRC, instead of selling investment property for cash and incurring such capital gains taxes, an owner of investment property may instead exchange such investment property (the "**relinquished property**") for other investment property (the "**replacement property**") of "like kind" – thereby transferring such owner's basis in the relinquished property to the replacement property and deferring paying capital gains taxes until there is a sale of the replacement property for cash.

> For example, if Mr. Green owns the Armstrong Apartments and Mr. Brown owns the Belvedere Apartments (and such properties are of equal value), Mr. Green and Mr. Brown may exchange their properties without incurring capital gains tax liability. Of course, the fact that such exchange does not result in federal income tax liability does not mean it is free from recordation and transfer taxes. As with any property swap,[2] the "consideration payable" for the deed of the Belvedere Apartments to Mr. Green is the value of the Armstrong

---

[1] *See* Memorandum of Advice from Julia Andrew, Asst. Att'y Gen., to all Clerks of the Cir. Cts. (Oct. 8, 2002) (copy attached).

[2] *See* 36 Op. Att'y Gen. 259 (1951) (each deed is taxable on value of other property conveyed).

Apartments – and the "consideration payable" for the deed of the Armstrong Apartments to Mr. Brown is the value of the Belvedere Apartments. Recordation and transfer taxes must be paid accordingly for their respective deeds to be recorded.

Of course, in the real world, it is rare for an owner of one investment property to find an owner of another investment property who is willing to exchange properties. There are a few ways in which such owner can arrange an exchange to take advantage of § 1031. One way would be to identify a purchaser for the property to be relinquished and a seller of investment property that is to be its replacement. The owner would then arrange with the purchaser of the relinquished property that such purchaser would buy the replacement property with cash (instead of paying cash for the relinquished property) and then exchange the replacement property for the relinquished property.

> Assume, for example, that Mr. Green owns, but would like to dispose of, the Armstrong Apartments. Mr. Green would like to exchange the Armstrong Apartments for the Belvedere Apartments owned by Mr. Brown, and Mr. Brown is willing to sell the Belvedere Apartments, but Mr. Brown wants cash (not another apartment building). Ms. Black would like to buy the Armstrong Apartments. So Mr. Green, Mr. Brown and Ms. Black agree that (i) Ms. Black will buy the Belvedere Apartments from Mr. Brown for cash, and (ii) Ms. Black will then transfer the Belvedere Apartments to Mr. Green in exchange for the Armstrong Apartments. Therefore there would be three (3) deeds needed to complete the transaction: (1) a deed from Mr. Brown to Ms. Black transferring the Belvedere Apartments; (2) a deed from Ms. Black to Mr. Green transferring the Belvedere Apartments; and (3) a deed from Mr. Green to Ms. Black transferring the Armstrong Apartments.

Under Ms. Andrew's interpretation, all three deeds would be subject to recordation and transfer taxes. Although understandable given the internal contradictions and other problems with the exchange agreement presented to Ms. Andrew for review, I have found that such interpretation was incorrect. Because of the deficiencies in the exchange agreement reviewed by Ms. Andrew, she was sidetracked into focusing on whether the intermediate party acted as an "agent" under Maryland agency law (*i.e.* the statutory and common law rules pertaining to agents and their principals). Because an intermediary cannot be merely the "agent" of the exchangor, Ms. Andrew saw each deed as a separate instrument for consideration.

However, by having her attention focused on agency law, Ms. Andrew did not notice that the opinions of this office have consistently viewed a broader range of instruments as "true no-consideration" deeds (or, from a different point of view, as deeds that do not so much reflect "real" transfers, but rather reflect an alignment of legal title with the "real" beneficial ownership of the property). This broader range of instruments includes, among other things, transfers to or from "straw men," between settlors and trustees of *inter vivos* trusts, and from nominees to the "real" purchaser, in addition to transfers between agents and principals.[3] These opinions can be summarized as follows: (1) a deed from a grantor to a grantee who is acting as the grantor's intermediary is "truly" for "no consideration," and the recordation

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[3] *See, e.g.*, 49 OP. ATT'Y GEN. 508 (1964), 42 OP. ATT'Y GEN. 126 (1957), 24 OP. ATT'Y GEN. 965 (1939); *see also* Letter of Advice from Julia M. Freit, Asst. Att'y Gen., to Janet Rudolph, Dep. Clerk of the Cir. Ct. for Baltimore Co. (Oct. 10, 1989).

and transfer taxes thereon are, therefore, zero; and (2) a deed from a grantor to a grantee for whom the grantor acted as the grantee's intermediary in acquiring the property is "truly" for "no consideration," and the recordation and transfer taxes thereon are, therefore, zero.

In the transaction described above, Ms. Black's purchase of the Belvedere Apartments is as the nominee for Mr. Green as the "real" purchaser. Therefore, the deed from Ms. Black to Mr. Green (described as deed #2 above) should be viewed as "true no-consideration" deed – but recordation and transfer taxes should still be charged (i) on the deed from Mr. Brown to Ms. Black (described as deed #1 above) based on the consideration paid to Mr. Brown for such deed, and (ii) on the deed of the Armstrong Apartments from Mr. Green to Ms. Black (described as deed #3 above) based on the value of the Belvedere Apartments (as the property given in consideration for deed #3).

On deed #2 from Ms. Black to Mr. Green, the "statement of consideration" required under Tax-Prop. § 12-104(a) should clearly state the deed is for no consideration and evidences the transfer of the Belvedere Apartments from the person who acted as [nominee / straw man / intermediary] for the grantee in acquiring the Belvedere Apartments.

Another way to conduct an exchange, under § 1031 and the regulations pursuant thereto, is through a business known as a "qualified intermediary" or "accommodation party" (hereinafter referred to as a "**Qualified Intermediary**"). There are a number of ways to structure a transaction using a Qualified Intermediary, but the two most common are the following situations: (1) in addition to identifying the property to be relinquished, the exchangor identifies property to be used as its replacement, but the replacement property is not yet developed; or (2) the exchangor identifies property to be used as a replacement, but has not yet located a buyer for the property to be relinquished.

In the first situation, the exchangor deeds the property to be relinquished to the Qualified Intermediary while the Qualified Intermediary purchases the replacement property with funds from a purchase money & construction mortgage loan (which usually limits recourse against the Qualified Intermediary to foreclosure on the replacement property, and is usually personally guarantied by the exchangor). Once the improvements to the replacement property are complete and a buyer has been identified for the relinquished property, the Qualified Intermediary (i) deeds the relinquished property to its purchaser, (ii) uses the proceeds from the sale of the relinquished property to pay down (or pay off) the mortgage loan encumbering the replacement property, and (iii) deeds the replacement property to the exchangor (subject, if applicable, to the lien for the mortgage loan if it remains outstanding).

In such situation there may be four (4) deeds plus a mortgage or deed of trust: (1) a deed of the relinquished property from the exchangor to the Qualified Intermediary; (2) a deed of the replacement property to the Qualified Intermediary; (2A) a mortgage or deed of trust by the Qualified Intermediary to secure the purchase money & construction loan with a lien on the replacement property; (3) a deed of the relinquished property from the Qualified Intermediary to its purchaser; and (4) a deed of the replacement property from the Qualified Intermediary to the exchangor.

Deed #1 is a "no consideration" deed as a conveyance from the exchangor to the Qualified Intermediary (who is acting as the exchangor's "nominee" or "straw man"). The "statement of consideration" required under Tax-Prop. § 12-104(a) should clearly state such deed is for no consideration and evidences the transfer of the relinquished property to the grantee who is acting as the [nominee / straw man / intermediary] for the grantor.

Deed #2 is a deed for consideration, and recordation and transfer taxes must be paid thereon based on the amount of consideration given by the Qualified Intermediary to the seller of the replacement property.

Subject to the purchase money mortgage exemption and the right to pay recordation tax only as advances are made, mortgage / deed of trust #2A is subject to recordation tax based on the debt incurred and secured thereby. (In addition, if the replacement property is in Prince George's County, such mortgage or deed of trust would be subject to the county transfer tax, subject to any exemptions found in the Prince George's County Code)

Deed #3 is subject to recordation and transfer taxes based on the consideration paid by the purchaser of the relinquished property.

Deed #4 is a "no consideration" deed as a conveyance from the Qualified Intermediary (who acted as the exchangor's "nominee" or "straw man" in purchasing the replacement property) to the exchangor (the "real" purchaser). (In keeping with prior opinions, although the property may be subject to outstanding mortgages, such assumed amounts do not count as consideration because the Qualified Intermediary encumbered the property and obtained the loan on behalf of the exchangor.) The "statement of consideration" required under Tax-Prop. § 12-104(a) should clearly state the deed is for no consideration and evidences the transfer of the replacement property from the person who acted as [nominee / straw man / intermediary] for the grantee in acquiring and improving the replacement property.

Thus, Deeds #1 and 4 would be "no consideration" deeds for which the recordation and transfer taxes would be zero (but such taxes must be paid on the other deeds and on the mortgage / deed of trust).

In the second situation, the Qualified Intermediary purchases the replacement property on behalf of the exchangor and holds onto such property while the exchangor searches for a buyer for the property to be relinquished. Once a buyer is found, the exchangor deeds the relinquished property to the buyer (but the settlement statement shows the relinquished property passing through the Qualified Intermediary to comply with IRS regulations), the funds from such buyer go to the Qualified Intermediary, and the Qualified Intermediary deeds the replacement property to the exchangor.

In such situation there are usually three (3) deeds: (1) a deed of the replacement property to the Qualified Intermediary; (2) a deed of the relinquished property from the exchangor to its purchaser; and (3) a deed of the replacement property from the Qualified Intermediary to the exchangor.

Deed #1 is a deed for consideration, and recordation and transfer taxes must be paid thereon based on the amount of consideration given by the Qualified Intermediary to the seller of the replacement property.

Deed #2 is a deed for consideration, and recordation and transfer taxes must be paid thereon based on the amount of consideration given by the buyer of the replacement property (even though such funds are directed to the Qualified Intermediary instead of directly to the exchangor).

Deed #3 is a "no consideration" deed as a conveyance from the Qualified Intermediary (who acted as the exchangor's "nominee" or "straw man" in purchasing the replacement property) to the exchangor (the "real" purchaser). Thus, the recordation and transfer taxes on Deed #3 would be zero. The "statement of consideration" required under Tax-Prop. § 12-104(a) should clearly state the deed is for no consideration and evidences the transfer of the replacement property from the person who acted as [nominee / straw man / intermediary] for the grantee in acquiring the replacement property.

Of course, there are a number of variants to such exchanges and we'll address each as necessary. However, I hope the basic rules are clear. Such rules can be summarized as:

> If A transfers property to B so that B may transfer it to C on A's behalf, then the transfer from A to B is subject to zero recordation and transfer taxes, but the transfer from B to C is subject to recordation and transfer taxes based on any consideration paid by C to A or B.
>
> If B acquires property from C on A's behalf, and then B transfers such property to A, then the transfer from C to B is subject to recordation and transfer taxes based on any consideration paid to C by A or B, but the transfer from B to A is subject to zero recordation and transfer taxes.

If you or your staff have any questions or concerns, please do not hesitate to contact me by phone, fax or e-mail at your convenience.