

OFFICIAL OPINION NO. 84-07, Transfer fee upon real estate

February 7, 1984

Mr. John R. Steele  
Aurora County State's Attorney  
Post Office Box 577  
Plankinton, South Dakota 57368

OFFICIAL OPINION NO. 84-07

Transfer fee upon real estate

Dear Mr. Steele:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

The Farmers Home Administration, an agency of the United States of America, is the holder of a valid, recorded, first mortgage against a certain parcel of real estate located in Aurora County. The mortgagors, being unable to make the payments as they come due, have entered into an agreement with the Farmers Home Administration whereby the mortgagors will execute a Warranty Deed conveying the property to the Farmers Home Administration and will surrender the property to the FHA in satisfaction of the indebtedness. The amount of indebtedness to be cancelled by FHA upon acceptance of the Deed and surrender is \$140,000.00.

The Farmers Home Administration, upon presenting the Deed for recordation at the office of the Aurora County Register of Deeds, has asserted that the amount of transfer fee payable upon the recordation of the Deed pursuant to SDCL 43-4-21 is zero dollars. FHA claims that the definition of 'value' as defined by SDCL 43-4-20(3) is 'the amount of the full consideration therefor paid, or to be paid, less the amount of any lien or liens assumed thereon.' The FHA would interpret this to mean that the value in the above- described transaction is zero dollars, since the mortgage indebtedness to FHA, is arguably, a lien being assumed by FHA.

In the course of advising the Register of Deeds, I have taken the broad view of the transaction that, all things considered, there has been a sale of the property to FHA and the transfer fee should be assessed on the full value of the present consideration, \$140,000.00.

Concerning this, you have asked the following question:

QUESTION:

What is the value in the above-described transaction upon which the transfer fee imposed by SDCL 43-4-21 should be assessed?

SDCL 43-4-21 reads as follows:

43-4-21. A fee is hereby imposed at the rate of fifty cents for each five hundred dollars of value or fraction thereof upon the privilege of transferring title to real property in the state of South Dakota, which fee shall be paid by the grantor.

SDCL 43-4-20(3) reads as follows:

43-4-20(3). 'Value' shall mean, in the case of any deed not a gift, the amount of the full consideration therefor paid, or to be paid, less the amount of any lien or liens assumed thereon.

SDCL 43-4-24 reads as follows:

43-4-24. At the time any deed evidencing a transfer of title subject to the fee imposed by § 43-4-21 is offered for recordation, the register shall collect the amount of the fee due thereon based upon the value declared and shall cause the amount of the fee so collected to be impressed by a stamp in red ink on the face of the deed after recordation.

It is my opinion that there has been a transfer of the property to the Farmers Home Administration by the mortgagor. It is my opinion that the transfer fee should be assessed on the full value of the present consideration, \$140,000.00.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General