

MEMORANDUM

Date: June 2023

From: Chicago Title, National Commercial Services – DC | MD

To: Our Valued Customers

OTR Tax Notice 2023-03 Summary

The Office of Tax and Revenue recently issued OTR Tax Notice 2023-03 (the “Notice”), which replaces OTR Tax Notice 2014-05, and provides guidance on the recordation tax treatment of refinances and modifications in DC. The Notice is attached to this email. We encourage you to read the Notice in full; however, this email outlines the issues we find the most compelling.

First, the Notice expands upon the requirement that, to qualify for the refinance exemption, the new loan must pay off, extinguish and replace an existing loan that is made to the **same obligor**. An obligor that merely changes its name or that converts into another form, such as from a corporation to an LLC, is considered the same obligor before and after the conversion and can benefit from the refinance exemption. On the other hand, if the obligor merges into a separate entity, the surviving entity will not be permitted to benefit from the exemption.

Second, the Notice reiterates the requirement that, to qualify for the refinance exemption, the new loan must pay off, extinguish and replace an existing loan that is secured by the **same real property**. Unless the same legal description from the old deed of trust is included in the description for the new deed of trust, the recording may be rejected under the refinance exemption. If there has been any change in the legal description, whether it be from a subdivision or simply a conversion of a tax lot into a record lot, the borrower may have to prove to the DC Recorder of Deeds that it is the same property to avoid paying the full tax. If it is determined that the new Deed of Trust secures less property than was secured by the old Deed of Trust, they will lose the refinance exemption. On the contrary, a new Deed of Trust can secure more property than the original Deed of Trust and still qualify for the exemption, as long as the same real property is included.

Finally, the Notice discusses the scenario in which a single new loan is not by itself sufficient to completely satisfy an existing loan. According to the Notice, such a loan would not qualify for the refinance exemption, even when paired with an additional new loan with a combined amount sufficient to pay off the existing loan. However, based on discussions with the DC Recorder of Deeds, the exemption may still apply if the borrower is going to make up the shortfall using cash.

Contact an underwriter in our office with any questions or to discuss the details of your transaction. Please note this email is for informational purposes only and should not be construed as legal advice.

To review full text of Notice, click [here](#).