

# Documentary Stamp Tax – Family Corporation, Partnership, and Limited Liability Company Exemption

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## Register of Deeds Duties

Pursuant to [Neb. Rev. Stat. § 76-214](#), every grantee that intends to have a deed to real estate recorded and every purchaser of real estate who wishes to record a memorandum of contract or land contract must file a completed [Real Estate Transfer Statement, Form 521](#), at the time such deed or document is presented for recording with the county register of deeds. If the grantee or purchaser fails to furnish a completed Form 521, Nebraska law prohibits the register of deeds from recording the deed, memorandum of contract, or land contract.

For the purposes of documentary stamp tax, [Neb. Rev. Stat. § 76-901](#) provides that “all deeds purporting to transfer legal title or beneficial interest shall be presumed taxable unless it clearly appears on the face of the deed or sufficient documentary proof is presented to the register of deeds that the instrument is exempt under section [Neb. Rev. Stat. § 76-902](#).” [350 NAC 52-003.01](#) further dictates that documentary stamp tax exemptions are to be strictly construed.

Under Nebraska law, it is the duty of a register of deeds to determine whether a deed presented for recording is entitled to an exemption prior to recordation. If an exemption is claimed, the register of deeds must examine the deed to determine whether it clearly appears on its face to qualify for an exemption. If not, but sufficient documentary proof is presented to the register of deeds which supports the claimed exemption, the register of deeds may accept the exemption and record the deed. If the deed on its face fails to support the claimed exemption and the supporting documentation does not support the claimed exemption, or no supporting documentation has been provided, the Form 521 is not complete and the deed cannot be recorded unless and until documentary stamp tax is collected.

## Exemption 5b

Nebraska law allows for the exemption from documentary stamp tax of certain deeds involving family corporations, partnerships, or limited liability companies (LLCs) that are transferred in the name of the corporation or partnership. The exemption is not allowed when such deeds are transferred in the name of the individual shareholders, partners, or members.

[Neb. Rev. Stat. § 76-902\(5\)\(b\)](#), also referred to as Exemption 5b, provides:

“Deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the

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issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members”

Generally, with certain exceptions, deeds to a family corporation, partnership or LLC from a family member, deeds to a family member from a family corporation, partnership, or LLC, and deeds between two corporations, partnerships, or LLCs whose shareholders or members are members of the same family, for no consideration, may be eligible for exemption 5b upon a showing that the shareholders or members of the family entit(y)/(ies) are members of the same family. The only consideration allowed is the issuance or return of stock in the corporation or interest in the partnership or LLC. More detail is provided below.

When exemption 5b is claimed on the Form 521 being filed, the register of deeds is to review the deed and any supporting documentation, such as a sworn affidavit, to ensure that the conveyance of real estate is eligible for the exemption. If no supporting documentation is provided, the exemption should not be granted and the deed should not be recorded unless documentary stamp tax is collected.

**Deeds eligible for Exemption 5b, subject to exceptions:**

- Deeds TO a corporation (whose stock are all owned by members of a family), a partnership (whose partners are family members), or an LLC (whose members are family members), as grantee, given for no consideration except the issuance of stock in the corporation or interest in the partnership or LLC to family members. No other consideration is allowed;
- Deeds FROM a corporation (whose stock are all owned by members of a family), a partnership (whose partners are family members), or an LLC (whose members are family members), as grantor, for no consideration except the return of stock to a family member who is a shareholder in the corporation as part of the partial or complete liquidation of the corporation or the dissolution of a family members interest in the partnership or LLC. No other consideration is allowed.

**Exceptions (Deeds NOT eligible for Exemption 5b):**

- Deeds between family members in their names as individuals.
- Deeds involving a party, as grantor or grantee, who is not a member of the same family as the shareholders or members of the other party to the transaction OR which is not also a family corporation, partnership, or LLC of the same family as the other party in the transaction.