

dants with monies arising out of their criminal activities.

Public Act 85-1014 (effective January 1, 1989). This Act amends *Ill.Rev.Stat.*, c. 38, ¶5-4, to provide that upon a second conviction for the crime of obscenity, the Attorney General is authorized to seize and sell all property, including real estate, derived from any proceeds that the convicted party obtained directly or indirectly as a result of such crime.

Public Act 85-1194 (effective August 19, 1988). This Act adds new ¶11-20.1A to c. 38 of the *Illinois Revised Statutes* to similarly provide for seizure and forfeiture of property, including real estate, which has been derived through juvenile prostitution, exploitation of a child, or child pornography. Injunctive relief is permitted during pendency of proceedings in order to prohibit the transfer of the property by a party suspected of such crimes.

Public Act 85-1300 (effective August 30, 1988). Paragraph 2165 is added to *Ill.Rev.Stat.*, c. 120 to establish a lien for a tax imposed upon the illegal sale of cannabis and controlled substances. The Act sets forth the requirements for the filing of the lien and foreclosure thereon.

Townships-Open Space: PA 85-1140 (effective July 29, 1988). This Act permits townships to establish open space plans to preserve designated areas of real estate from development.

BUYER BEWARE!

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I recently attended a closing where I represented the seller of a commercial building in the City of Chicago. It was a long closing, and the parties had an extended dispute over a \$200 security deposit.

Having resolved that, the transaction was almost finished when the buyer suddenly inquired of his lawyer why he was being charged \$3750 for city stamps (\$7.50 per thousand on a

\$500,000 purchase price). The buyer's lawyer stated that this was the buyer's charge since it was customary.

Something is wrong here. We had just had a dispute over \$200, all other items had been prorated, and the buyer ends up paying 7 1/2 times more than the seller (seller paid \$500 - \$1.00 per thousand).

Lawyers who represent purchasers should stop being lazy. There is no earthly reason why the city and state stamp charges cannot be prorated like every other charge. Parties can do this by contract. By contract, parties can agree to any type of proration; for instance, it is common for the seller to insist on a net price and require the buyer to pay all taxes and assessments, or the seller can agree to pay all prorations.

A second argument is that the statute requires the buyer to pay the tax. The city ordinance, (Subsection 200, 1-2B (3)) states:

The ultimate incidence of and liability for payment of said tax shall be borne by the grantee or purchaser involved in any such transaction. The tax herein levied shall be in addition to any and all other taxes. It shall be the duty of the person or persons making or effectuating the sale, or transfer of registration to pay the tax provided by this Section; provided, however, that this subdivision shall not apply to any transfer wherein the vendor or transferor is a governmental entity or international organization and is not subject to the tax.

The tax herein levied shall be paid by purchase of tax stamps from the Department of Revenue. It shall be the duty of the person or persons making or effectuating the sale or transfer, to pay to the City of Chicago the tax provided by this Section. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed to the face of the deed. Any person affixing a revenue stamp shall cancel it in accordance with the provisions of Section 200.1-5C of this Chapter.

The statute merely states that the ultimate responsibility is on the Buyer. But the City doesn't care who pays for the stamps. The recorder will not decline to accept the conveyance if the seller buys the stamps or the stamps are prorated.

A current list of transfer tax ordinances for the Chicago area is available from ATG's Chicago office. To get a copy, call (312) 372-8361 and ask for the Quality Control Department. Looking at the list, it is obvious that there is a crazy quilt of regulations which cry out for a uniform response. Those that make the purchaser liable for payment do not mandate that the purchaser pay.

The point is that the lawyer representing the buyer is remiss if he does nothing, and lets his client pay 7 1/2 times more than the seller because it's the custom. Transfer taxes cannot be characterized as an entrance tax to be paid by the purchaser. They could just as well be described as an exit tax to be paid by the seller.

The answer is clear. Uniformity is needed. There are two ways to do it:

1. Prorate the stamp taxes.
2. Add them together and divide between the parties.

LOVE IS NOT THICKER THAN MORTGAGES

Absent evidence that the bank owed the maker of a mortgage note a fiduciary duty or defrauded the mortgagor in some way, the bank is not barred from recovery on the note by the doctrine of unclean hands.

Defendant's boyfriend contacted plaintiff-bank to obtain a \$10,000 business loan. Since he had a \$30,000 outstanding loan and no further collateral for security, he was denied. The boyfriend convinced the defendant to use her house as collateral for his loan, not knowing that he was dating other women and using her for her money.

Plaintiff-bank consolidated the boyfriend's pre-existing debts and