

# Real estate excise tax exemptions (commonly used)

There are limited exemptions to REET. Below is an overview of the most commonly used exemptions. However, it is important you review the full text and examples prior to claiming an exemption. The information below is intended as a general guide.

## REET exemptions (commonly used):

[Collapse all](#)

↗ Gift

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## **Gift - WAC 458-61A-201**

Generally, a gift of real property is not a sale and is not subject to REET. A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property. If consideration is given in return for the interest granted, it is subject to REET based on the consideration received.

Consideration can be monetary payments or anything of value given to the grantor. Consideration is also any payments from the grantee toward underlying debt on the property. If the grantee agrees to assume payment of the grantor's debt on the property, there is consideration and REET is due on the debt relief the grantor receives in addition to any other form of payment.

In general, equity in property can be gifted but debt cannot. A gift of equity for REET purposes is the difference between the true and fair value of the property and any underlying debt. Both of these amounts must be disclosed in section 2 of the supplemental statement when claiming a gift exemption.

If a refinance occurs within six months of the transfer, debt relief is received by the removal of, or addition of, any parties. For example, two people are on title each of whom is responsible for 50% of the debt on the property. At the time of a refinance of the debt, one person is removed from title. The person being removed from title is receiving relief of the 50% of debt for which they had been responsible. This debt relief is taxable.

The exemption code entered in section 7 of the affidavit must reference the WAC 458-61A-201 and the selection made on the supplemental statement in section A (Gifts with consideration) **or** section B (Gifts without consideration).

### **Special consideration for controlling interest transfers**

In a controlling interest transfer, a gift exemption is not valid if there is debt on the property, and the borrower is the transferred entity.

When the new owner(s) receive controlling interest in the entity, that means they are now responsible for the debt on the property. This relief of debt for the seller is consideration. In a controlling interest transfer, if **any** consideration is received, the transfer can't be a gift.

Because the tax basis for a controlling interest transfer is 100% of the true and fair value of the property rather than the consideration received, the gift exemption will not apply.

^ Inheritance or devise

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## Inheritance or devise - WAC 458-61A-202

Transfers of real property through a devise by will or inheritance are not subject to REET.

A transfer of property from an heir to any third party is subject to REET.

There are several specific exemptions available related to inheritance. For these exemptions, it doesn't matter if there is debt on the transferred property at the time it was inherited. The documentation listed is **required** and **must** be provided to the county treasurer at the time the affidavit and conveyance document are recorded.

WAC 458-61A-202 with section and subsection must be claimed as an exemption in Section 7 of the affidavit.

### **Community property agreement or right of survivorship**

The transfer to a surviving spouse in accordance with a community property agreement or right of survivorship is exempt. A copy of the recorded agreement and the certified copy of the death certificate are required. A REET affidavit is required to claim this exemption.

### **Joint tenants with right of survivorship and remainder interests**

The transfer to the remaining joint tenant upon the death of a joint tenant, when the property is owned under right of survivorship, is exempt. A certified copy of the death certificate is required. A REET affidavit is required to claim this exemption.

### **Life estates and remainder interests**

The transfer of a life estate with a remainder interest to another party is exempt if no consideration passes. REET is due on any consideration paid for the transfer. A REET affidavit is required to claim this exemption.

### **Transfer on death deeds**

The transfer of property due to a **previously recorded** transfer on death deed to the beneficiary named in the transfer on death deed is exempt. A certified copy of the death certificate is required. A REET affidavit is

required to claim this exemption.

If the transfer of property is due to a transfer on death deed that satisfies a contractual obligation owed to the beneficiary named in the transfer on death deed, it is not exempt and REET is due on the transfer.

## **Trusts**

The transfer of property under the terms of a trust instrument is exempt. A certified copy of the death certificate and a copy of the portion of the trust instrument showing the authority of the grantor are required. A REET affidavit is required to claim this exemption.

## **Probate**

The transfer of property under the terms of a probated will is exempt. A certified copy of the letters testamentary (or a certified copy of the letters of administration in the case of intestate administration) showing the grantor is the court appointed executor or administrator is required. A REET affidavit is required to claim this exemption.

## **Court order**

The transfer of property under the terms of a court order in an estate is exempt. A certified copy of the court order requiring the transfer and confirming the grantor is required to make the transfer are required. A REET affidavit is required to claim this exemption.

## **Community Property Interest**

The community property interest of the decedent to a surviving spouse without the above documents is exempt. However, as well as a certified copy of the death certificate, a lack of probate affidavit affirming the spouse is the sole and rightful heir to the property is required. The REET affidavit is not required with the lack of probate affidavit.

## **Non-probated will or operation of law**

The transfer to one or more heirs by operation of law or under a will that has not been probated without the above documents is exempt. However, as well as a certified copy of the death certificate, a lack of probate affidavit affirming the sole and rightful heirs to the property is required. The REET affidavit is not required with the lack of probate affidavit.

- ^ Community property, dissolution of marriage or domestic partnership, legal separation, decree of invalidity

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## **Community property, dissolution of marriage or domestic partnership, legal separation, decree of invalidity - WAC 458-61A-203**

### **Community property**

Transfers from one spouse to the other to create or separate community property are exempt.

## Court decree

Transfers from one spouse to the other under a settlement agreement due to a divorce decree, declaration of invalidity, or legal separation are exempt.

This **only** applies to legally married or **state registered** domestic partners. It does not apply to unmarried committed relationships regardless of a court ordered settlement agreement.

## Transfers to third parties

A sale by either or both spouses to a third party is **not** exempt, even if the sale is under the terms of a divorce decree, declaration of invalidity, or legal separation.

## Former spouses

Transfers between ex-spouses that are not addressed in the settlement agreement due to a divorce decree or declaration of invalidity are **not** exempt.

^ Tenants in common and joint tenants

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## **Tenants in common and joint tenants - WAC 458-61A-204**

Transfers to create a tenancy in common for property that is currently owned in joint tenancy with or without right of survivorship is exempt if no consideration passes.

Transfers to create joint tenancy with or without right of survivorship for property that is currently owned as tenants in common is exempt if no consideration passes.

This exemption **does not** apply to transfers adding or removing people from title.

## **Partition**

The partition of real property by tenants in common or joint tenants, **by agreement or court order** is exempt provided the transfer is without additional consideration.

A partition results when the parties agree that each party will be assigned specific tracts of the property they own together. For there to be a partition, the property must be divided into distinct tracts with each party taking separate ownership of those tracts of property.

The sale of an interest in real property from joint tenants or tenants in common to the remaining tenants or to a third party is **not** exempt.

↗ Governmental transfers

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## Governmental transfers - WAC 458-61A-205

A government entity selling real property is exempt from REET.

Voluntary transfers to a government entity are not exempt unless they fall under the rules for condemnation proceedings or threat of eminent domain; see below.

Transfers to a government entity for a public use in connection with the development of property, when the transfer is **required** for plat approval, are exempt.

## ^K Condemnation Proceedings

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### **Condemnation Proceedings - WAC 458-61A-206**

Transfers to a government entity under an imminent threat of eminent domain, a court judgment, or settlement based on inverse condemnation or actual exercise of eminent domain are exempt.

To qualify for this exemption, the below requirements **must** be met:

- The transfer must be to a government entity with the actual power to exercise eminent domain.
  - The threat to exercise eminent domain must be imminent.
    - The government must have filed condemnation proceedings; or
    - The government must have notified the seller in writing of its intent to exercise its power of eminent domain; and
    - The government must have the ability and authority to use its power of eminent domain at the time of sale; and
    - The government must have specific statutory authority authorizing its power of eminent domain.
- The seller must have a judgement against the government entity or a court approved settlement, based on inverse condemnation.

^ Bankruptcy

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## **Bankruptcy - WAC 458-61A-207**

Transfers by a trustee in bankruptcy or debtor in possession made after the plan is confirmed under a **chapter 11** or **chapter 12** plan are exempt. Federal law prevents REET on these transfers.

- ^ Transfers pursuant to deed of trust, foreclosure proceedings, executions of a judgment, deeds in lieu of foreclosure, and contract forfeiture

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## **Transfers pursuant to deed of trust, foreclosure proceedings, executions of a judgment, deeds in lieu of foreclosure, and contract forfeiture - WAC 458-61A-208**

### **Deed of trust**

Transfers in a foreclosure sale by the trustee under the terms of a deed of trust, either to the beneficiary or a third party are exempt.

### **Court ordered sale in a foreclosure proceeding**

Transfers due to a court order or sale by a court in any **mortgage, deed of trust, or lien foreclosure** are exempt. **This exemption does not apply to any other court ordered sale.** Any type of negotiated sale is taxable unless another exemption applies. The affidavit must cite the cause number of the foreclosure proceeding. A copy of the court decision must be provided to the county treasurer or the department on request.

### **Execution of a judgement-sheriff's sale**

Transfers due to the execution of a judgment, generally known as sheriff's sale are exempt. There must be a writ of execution by the court ordering the property sale. This writ of execution must be provided to the county treasurer or the department on request.

### **Right of redemption**

A subsequent sale or assignment of the right of redemption and the certificate of purchase resulting from the sheriff's sale are **not** exempt. REET is based on any payment given or promised to be given and the amount of underlying debt required to be paid for the exercise of the right of redemption.

### **Receivers**

Transfers by a receiver appointed by a court to give effect to the court's judgement are **not** exempt. A court order may state the transfer is exempt from REET. However, these transfers **are taxable** because the

court order conflicts with the Washington Administrative Code governing these types of transfers.

### **Deed in lieu of foreclosure**

Transfers by deed in lieu of foreclosure to satisfy a mortgage or deed of trust are exempt **if no additional consideration passes**.

Transfers by the buyer in a contract purchase to the holder of the contract in lieu of forfeiture due to default on the debt is exempt **if no additional consideration passes**.

### **Contract forfeiture**

A transfer due to the cancellation or forfeiture of a buyer's interest in a real estate contract is exempt **if no additional consideration passes**.

### **Assignment of indebtedness**

A transfer from a servicing agent, who has acquired property due to a foreclosure proceeding or a deed in lieu of foreclosure to the actual owner of the debt is exempt.

↗ Rescission of sale

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## **Rescission of sale - WAC 458-61A-209**

The **reconveyance** of property due to a rescission of sale is exempt. This exemption applies only to the **transfer back to the original owner**. It does **not** apply to the original sale.

To qualify for this exemption all consideration paid toward the selling price must be returned by the seller to the buyer when the property is transferred back to the seller.

^ Irrevocable trusts

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## **Irrevocable trusts - WAC 458-61A-210**

### **Transfer from an irrevocable trust**

The distribution of property to the beneficiaries of an irrevocable trust is exempt if no consideration is given for the transfer and the distribution is made according to the provisions in the trust.

### **Transfer to an irrevocable trust**

The transfer to an irrevocable trust is **not** exempt if the transfer results in a change in the beneficial interest, not a mere change in identity **and** there is valuable consideration for the transfer.

^ Mere change in identity or form - Family corporations and partnerships

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## **Mere change in identity or form - Family corporations and partnerships - WAC 458-61A-211**

A transfer in which there is a mere change in form or identity with **no beneficial interest change** in ownership is exempt. If the transfer results in the grantors having a different proportional interest after the transfer, it is **not** exempt.

Bob and Jane each own 50% of the property. They transfer the property to an LLC in which Jane owns an 80% membership interest and Bob owns a 20% ownership interest. This is a different proportional interest and is not an exempt transfer.

### **Qualified transactions**

- The transfer by an individual or tenants in common of an interest in property to an entity (corporation, LLC, partnership, etc.) if the entity receives it in the same pro rata shares as the individual or tenants in common held prior to the transfer.
- The transfer by an entity (corporation, LLC partnership, etc.) of its interest in real property to its shareholders or partners in the same pro rata shares as they owned the entity.

- The transfer by an entity of its interest in property to its wholly owned subsidiary, the transfer from a wholly owned subsidiary to its parent or the transfer from one wholly owned subsidiary to another wholly owned subsidiary.
- The transfer by an entity of its property to another entity, if the grantee receives it in the same pro rata shares the grantor held prior to the transfer.
- Corporate mergers and consolidation accomplished by transfer of stock or membership and mergers between corporations and limited partnerships.
- The transfer of property to a **newly** formed corporation from an incorporator if both of the following apply:
  - REET was paid on the original transfer to the incorporator.
  - There is documentation before the original transfer that the incorporator received title to the property on behalf of the corporation during its formation process.
- The transfer into any revocable trust.
- The transfer from a trustee of a revocable trust to the original grantor or to a beneficiary **if there is no consideration.**

### **Family corporations, partnerships, or other entities**

Transfers to an entity that is **wholly owned** by the grantor and/or the grantor's spouse or children, regardless of a change in beneficial interest, are exempt.

Review subsection 5 of the above referenced WAC for subsequent transfer circumstances that could result in REET becoming due on the original transfer.

### **Transfers when there is not a change in identity or form or ownership**

Transfers when the grantor and grantee are the same are exempt. For example, a transfer to change ownership from tenants in common to the same owners as joint tenants with rights of survivorship.

^ Transfers where gain is not recognized under the Internal Revenue Code

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## Transfers where gain is not recognized under the Internal Revenue Code - WAC 458-61A-212

A transfer, that for federal income tax purposes, does not involve the recognition of gain or loss for entity **formation, liquidation or dissolution, and reorganization** is exempt.

### Internal Revenue Code sections

- Section 332 - Corporate liquidations – **complete** liquidations of subsidiaries.
- Section 337 – Corporate liquidations – property distributed to the parent company in **complete** liquidation of a subsidiary.

- Section 351 – **Corporate** organization and reorganizations – transfer to corporation controlled by the transferor.
- Section 368(a)(1) – **Corporate** organizations and reorganizations.
- Section 721 – Partners and partnerships – Nonrecognition of gain or loss on contribution.
- Section 731 – Partners and partnerships – Extent of recognition of gain or loss on distribution.

Even though the transfer may be classified as a non-recognition of gain under the IRC, the department requires the additional stipulation that the transfer **must** be for entity formation, liquidation or dissolution, and reorganization.

### **Treatment when gain is partially recognized**

In a transfer that qualifies under this section, but a gain is partially recognized under the IRC, REET applies to the amount for which gain is recognized.

↗ IRS “tax deferred” exchange

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### **IRS “tax deferred” exchange - WAC 458-61A-213**

The purchase of property by an exchange facilitator in connection with an Internal Revenue Code section 1031 tax deferred exchange is **not** exempt.

The subsequent transfer of the property by the exchange facilitator in completion of the exchange is exempt **if each the following requirements are met:**

- REET was paid on the initial transfer.
- The REET supplemental statement signed by the exchange facilitator must be attached to the REET affidavit. The supplemental statement attests that the exchange facilitator originally took title to the property for the sole purpose of facilitating a 1031 tax deferred exchange.
- The funds used by the exchange facilitator to acquire the property were provided by the grantee and/or received from the proceeds of the sale of the initial property.

The REET affidavit for the subsequent transfer must show the affidavit number and date of the tax payment for the initial transfer.

↗ Nominee

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county treasurer, whichever is later. In the case of an audit, you will be required to submit any documents the department requests to substantiate the validity of the exemption claimed.

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## Nominee - WAC 458-61A-214

A nominee is a person who acts as an agent on behalf of another person in the purchase of real property.

The initial acquisition of property on behalf of a third-party purchaser by a nominee is **not** exempt.

The subsequent transfer of the property by the nominee to the third-party purchaser is exempt **if each of the following requirements are met:**

- REET was paid on the initial purchase of the property.
- The funds used by the nominee for the initial purchase of the property were provided by the third-party purchaser.
- An agreement between the nominee and the third-party purchaser existed at the time of the initial purchase.

- The subsequent transfer from the nominee to the third party is not for greater consideration than the initial purchase.

The REET affidavit for the subsequent transfer claiming exemption from REET must show the REET affidavit number and the date of payment for the initial acquisition of the property.

Documentation must show the parties have met all of the above requirements. For example:

- A notarized statement, dated on or before the date of the initial purchase that the nominee acquired the property on behalf of the third-party purchaser.
- Financial documentation proving the relationship existed from the time of the original transfer.
- Financial documentation proving the source of funds used to purchase the property was provided by the third-party purchaser.

↖ Clearing or exiting title, and additions to title

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## **Clearing or exiting title, and addition to title - WAC 458-61A-215**

Quitclaim deed given for the sole purpose of clearing title **if no consideration passes** are exempt. This exemption can be used to clear presumptive interest. It **does not** apply to transfers adding or removing people from title except for co-signing purposes **only**.

Transfers for the sole purpose of adding a co-signor, as a requirement by a lender to qualify for a mortgage, are exempt **if no consideration** is given for the transfer. The co-signor will not make financial contributions to the down payment or monthly mortgage payments.

Transfers for the sole purpose of removing a co-signor added in the above circumstance are exempt **if no consideration** is given for the transfer. This exemption is valid only if the intention was to go on title as a co-signor **only**, not as a co-purchaser, and they have not provided any funds toward the repayment of the loan or the down payment on the original purchase.

### Co-signor certification (Fill-In)

To claim this exemption, a narrative that explains the nature of the addition or removal of someone from title must be provided to the county treasurer or the department upon request. The narrative must be signed by both the grantor and grantee and attached to the REET affidavit.

^ Re-record

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## Re-record - WAC 458-61A-217

The re-recording of documents to correct a legal description, change contract terms or correct the spelling of a name is exempt.

This exemption can't be used to add or remove parties or change the transferred property. This is only for minor clerical changes.

The affidavit must refer to the prior affidavit number and the recorded document number for the prior transfer and must include a complete explanation.

## ^ Low-income housing

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### **Low-income housing - WAC 458-61A-218**

Transfers of qualified low-income housing developments are not subject to REET.

A qualified low-income housing development means real property and improvements in which the grantor (seller) was allocated federal low-income housing tax credits.

If, due to noncompliance with federal statutory requirements, the seller is subject to recapture of its allocated federal low-income housing tax credits within the four years prior to the date of transfer, this exemption will not apply and REET is due on the transfer.

- ^ Developmentally disabled persons - Housing transfers and improvements

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## **Developmentally disabled persons - Housing transfers and improvements - WAC 458-61A-219**

The transfer of real property by a legal representative of a person with developmental disability to a qualified entity is exempt from REET if certain conditions are met and there is no consideration for the transfer.

- The grantor's adult child (or otherwise legally represented person) with developmental disabilities retains a life estate in the property and must be allowed to reside in the residence so long as it is safe and appropriate, as determined by DSHS.
- There is no consideration for the transfer, which may include money or anything of value, the performance of services or assumption of debt.
- The property can't have more than four living units.
- The property must remain in continued use as supported living for persons with developmental disabilities for a period of at least fifty years.

↖ Self-help housing

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### **Self-help housing - RCW 82.45.010(3)(u)**

The transfer of real property by an affordable homeownership facilitator of self-help housing to a low-income household is exempt from REET.

- An affordable homeownership facilitator means a 501(c) nonprofit community or neighborhood based organization that is the developer of self-help housing.
- Low-income household may not exceed eighty percent of median household income, adjusted for household size, for the county in which the property is located.
- Self-help housing means residences provided for ownership by low-income individuals and families whose ownership requirement include labor participation. This doesn't include rental housing provided on a commercial basis to the general public.

↗ Affordable housing

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### Affordable housing - RCW 82.45.010(3)(v)(i)

Transfers of real property to a qualifying grantee that uses the property for housing for low-income persons and receives an exemption from real and personal property taxes are exempt. Review the linked RCW for definitions of a qualifying grantee. The completed certification form **must** be signed by the grantee and provided with the completed REET affidavit at the time of transfer.

There are 3 separate exemptions that fall under this category:

- Operation of existing housing on the property – RCW 82.45.010(3)(v)(i)(A)
  - Within **one** year, the grantee must receive (or qualify to receive) an exemption from real and personal property taxes.
  - The grantee intends to operate existing housing on the property.
- Development of new housing on the property – RCW 82.45.010(3)(v)(i)(B)
  - Within **five** years, the grantee must receive (or qualify to receive) an exemption from real and personal property taxes.
  - The grantee intends to develop new housing on the property.
- Substantial rehabilitation of housing on the property - RCW 82.45.010(3)(v)(i)(C)

- Within **three** years, the grantee must receive (or qualify to receive) an exemption from real and personal property taxes.
- The grantee intends to substantially rehabilitate the premises as defined in RCW 59.18.200.



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