

ARTICLE III. REALTY TRANSFER TAX*

***Charter references:** Power of city to impose and collect tax on transfer of real property, subpart A, § 3.

Sec. 102-71. Definitions.

(a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Document* means any deed, instrument or writing whereby any real estate within the corporate limits of the city, or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to the grantee, but shall not include the following:

- a. Any will;
- b. Any lease other than those described or defined in subsection (a)(2) of this section;
- c. Any mortgage;
- d. Any conveyance between corporations operating housing projects pursuant to 31 Del. C. § 4501 et seq., and the shareholders thereof;
- e. Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;
- f. Any conveyance to nonprofit industrial development agencies;
- g. Any conveyance between a husband and wife;
- h. Any conveyance between persons who were previously husband and wife, but who have since been divorced, provided that such conveyance is made after the granting of the final decree in divorce and the real estate or interest therein subject to such conveyance was acquired by the husband and wife, or husband or wife prior to the granting of the final decree in divorce;
- i. Any conveyance between parent and child or the spouse of such a child;
- j. Any conveyance:
 1. To a trustee, nominee or straw party for the grantor as beneficial owner;
 2. For the beneficial ownership of a person, other than the grantor, where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter; or
 3. From a trustee, nominee or straw party to the beneficial owner;
- k. Any conveyance between a parent corporation and a wholly owned subsidiary corporation, provided that such conveyance is without actual consideration;

- l. Correctional deeds without actual consideration;
- m. Any conveyance to or from the United States, this state or to any of their instrumentalities, agencies or political subdivisions and the University of Delaware;
- n. Any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as his interest in, or ownership of, the real estate being conveyed; provided, however, that this subsection shall not apply to any distribution in liquidation or other conveyance resulting from the partial or complete liquidation of a corporation, unless the stock of the corporation being liquidated has been held by the grantor or grantee for more than three years; provided, further, this subsection shall not apply to any conveyance from a partnership to its partners, unless the partners' interest in the partnership has been held for more than three years;
- o. Any conveyance by the owner or previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises are taken in trade by such builder as a part of the consideration from the purchaser of new, previously unoccupied premises;
- p. Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default, either by a sheriff conducting a foreclosure sale, or by the mortgagor in lieu of foreclosure;
- q. Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee, or by any privy of the grantee, for any commercial purpose; provided, however, that only that portion of the tax which is attributable and payable by the religious organization or other body or person holding title to real estate for a religious organization under 30 Del. C. § 5402 shall be exempt;
- r. Any conveyance to or from a volunteer fire company organized under the laws of this state; provided, however, that only that portion of the tax which is attributable to and payable by the volunteer fire company by this article shall be exempt;
- s. Any conveyance of a "mobile home," as defined in 25 Del. C. § 7003;
- t. Any conveyance without consideration to an organization exempt from tax under section 501(c)(3) of the federal Internal Revenue Code (26 USC 501(c)(3));
- u. Any conveyance to a nonprofit conservation organization, when the property is purchased for open space preservation purposes;
- v. Any conveyance to or from a nonprofit corporation or organization of real estate acquired for the purpose of rehabilitation and resale without profit.

(2) *Document* includes the following:

- a. Any writing purporting to transfer a title interest or possessory interest for a term of more than five years in a condominium unit or any unit properties subject to the Unit Property Act pursuant to 25 Del. C. § 2201 et seq.
- b. Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the state or other political subdivision thereof.

c. Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than five years. For this purpose, the term "residential property" means any structure or part of a structure which is intended for residential use, and excluding any commercial unit subject to tax under 30 Del. C. § 2301(a)(88) relating to commercial lessors.

(3) *First time homebuyer* means a natural person who has at no time held an interest in residential real estate, wherever located, and which has been occupied as their principal residence, and who intends to occupy the property being conveyed as his principal residence, within 90 days following recordation of the deed. The first time homebuyer must file an affidavit certifying to his qualifications before the exemption can be granted. In order to alleviate claims for rebate of the transfer tax paid, no rebate shall be made once the deed for the transaction has been recorded. First time homebuyers submitting a false affidavit in any respect, which would entitle them to the exemption, shall be subject to payment of the unpaid transfer tax, plus interest at the rate of 1 1/2 percent per month and, upon direction by the council, referral to the attorney general of the state for criminal prosecution. This subsection shall apply to all real estate settlements held on or after January 2, 2000. First time homebuyers are exempt from the transfer tax as provided herein. The first time homebuyer exemption shall apply to the seller of property that qualifies for the first time buyer exemption but only for property situated in the area from Mary Street to Loockerman Street and Governors Avenue to West Street. This homebuyer's exemption for the seller is to be effective from the date of adoption [August 8, 2005] to August 1, 2010. Council shall have the right to deny this exemption to any property owner where the sale and purchase appears to be done fraudulently to take advantage of the realty transfer tax exemption ordinance.

(4) *Transaction* means the making, executing, delivering, accepting or presenting for recording of a document.

(5) *Value* means, in the case of any document granting, bargaining, selling or otherwise conveying any real estate or interest or leasehold interest therein, the amount of the actual consideration therefor, including liens or other encumbrances thereon, and ground rents which encumber the interest in real estate and any other interest in real estate conveyed, provided, that, in the case of a transfer for an amount less than the highest appraised full value of said property for local real property tax purposes, the term "value" shall mean the highest such appraised value, unless the parties or one of them can demonstrate that fair market value is less than the highest appraised value, in which case, the term "value" shall mean fair market value, or actual consideration, whichever is greater. A demonstration that the transaction was at arm's length between unrelated parties shall be sufficient to demonstrate that the transaction was at fair market value.

(b) In determining the term of a lease, it shall be presumed for the purpose of computing the lease term, that any rights or options to renew or extend will be exercised.

(c) For the purpose of subsection (a)(5) of this section, in the case of a document described in subsection (a)(2) of this section under which the consideration is based, in whole or in part, on a percentage of the income or receipts to be received in the future, actual consideration shall include the amounts actually received under such percentage of income or receipts provision; provided, however, and notwithstanding any other provisions of this article, that the tax imposed by this article shall be due and payable to the finance director within 30 days after the date such amounts become due and payable under the agreement.

(d) Transfers through conveyance of interest.

(1) Except as provided in subsections (d)(2) and (3) of this section, where beneficial ownership in real estate is transferred through a conveyance or series of conveyances of intangible interests in a corporation, partnership or trust, such conveyance shall be taxable under this article as if such property were conveyed through a duly recorded

"document" as defined in subsection (a)(1) of this section, and subject to the exemptions contained therein, except those exemptions contained in subsections (a)(1)j. and (a)(1)n. of this section.

(2) No bona fide pledge of stock or partnership interests as loan collateral, nor any transfer of publicly traded stock or publicly traded partnership interest shall be deemed subject to taxation under this subsection (d).

(3) Where the beneficial owners of real property, prior to the conveyance or series of conveyances referred to in this subsection (d), own 80 percent or more of the beneficial interest in the real estate following said conveyance or series of conveyances, such transfers shall not be subject to tax under this subsection (d). Where the beneficial owners of real property, prior to the conveyance or series of conveyances referred to in this subsection (d), own less than 80 percent of the beneficial interest in the real estate following said conveyance or series of conveyances, such transfers shall not be subject to tax under this subsection (d), unless under regulations promulgated by the city assessor, such transfer or transfers are properly characterized as a sale of real property. Such characterization shall take into account the timing of the transaction, beneficial ownership prior to and subsequent to the conveyance or conveyances, the business purpose of the corporation, partnership or trust, and such other factors as may be relevant.

(Code 1981, § 19.5-19; Ord. of 6-27-1988; Ord. of 4-22-1996; Ord. of 8-10-1998; Ord. of 12-13-1999; Ord. of 8-8-2005(1))

Sec. 102-72. Applicability to certain construction.

(a) *"Document" defined.* Notwithstanding section 102-71, there shall be included in the definition of the term "document," for purposes of this article, any contract, or other agreement or undertaking for the construction of all or a part of any building all or a portion of which contract, agreement or undertaking (or any amendment to the foregoing) is entered into, or labor and materials are supplied, either prior to the date of the transfer of the land on which the building is to be constructed or within one year of the date of the transfer to the grantee.

(b) *Building permit.* No building permit shall be issued unless and until the person or persons (including corporations and/or other associations) requesting such permit shall demonstrate, in whatever form may be specified by the city assessor, including, at his discretion, a form of affidavit, that:

- (1) No transfer as described in this section has occurred within the preceding year;
- (2) No portion of the contract for construction for which the permit is being requested was entered into and no materials or labor with respect to the building have been provided within one year of the date on which the property was transferred; or
- (3) There has been paid a realty transfer tax on the document as defined in this section.

(c) *Certificate of occupancy.* In addition, no certificate of occupancy shall be issued relative to any building on which a tax is provided by this section, unless and until the owner recertifies the actual cost of the building and pays any additional tax due as a result of such recertification.

(d) *"Building" defined.* The term "building," for purposes of this section, shall mean any structure having a roof supported by columns or walls, which structure is intended for supporting or sheltering any use or occupancy, but shall not include any alteration of or addition to an existing building where the cost of such alteration or addition is less than 50 percent of the value of the property transferred.

(e) *"Transfer" defined.* The term "transfer," for purposes of this section, shall include any transfer made by a "document" as defined in section 102-71, and shall not include any transaction excluded from the definition of the term "document."

(f) *Inventory for resale.* This section shall not apply to the application for a building permit by a builder or developer who acquires the land and obtains the permit for the purpose of including the land with improvements in the builder's or developer's inventory for resale.

(g) *Rate of certain tax.* Notwithstanding section 102-73, the rate of tax on documents described in subsection (a) of this section shall be one percent on amounts exceeding \$10,000.00, which shall be borne by the owner of the building whose construction is made subject to tax under subsection (a) of this section.

(Code 1981, § 19.5-19.1; Ord. of 4-22-1991)

Sec. 102-73. Levied; exemptions.

(a) *Rate.* Every person who makes, executes, issues or delivers any document, or in whose behalf any document is made, executed, issued or delivered, shall pay therefor and in respect thereof, or for and in respect of the vellum, parchment or paper upon which such document is written or printed, a tax at the rate of 1 1/2 percent of the value of the property represented by such document, which tax shall be payable at the time of the making, execution, issuance or delivery of such document, and said tax is to be apportioned equally between the grantor and grantee, unless otherwise provided for by agreement of the parties.

(b) *Nominee for grantee.* Where a person acquires title to any lands, tenements or hereditaments as a nominee or as a straw party for the real grantee or purchaser, the transfer of such title by such nominee or straw party to the real grantee or purchaser shall be exempt from this tax.

(c) *Nominee for grantor.* Where a person acquires title to any lands, tenements or hereditaments for the purpose of holding the same as a nominee or as a straw party for the grantor, such transfer of title to the nominee or straw party shall be exempt from this tax.

(d) *Expenditure of funds.* The rate of tax imposed by this article, and other provisions or language to the contrary notwithstanding, shall be 1 1/2 percent of the property value represented by such documents as referred to herein and funds realized pursuant to this article shall be segregated from the general fund and be expended solely for capital and operating costs of public safety services and for other programs and services, all in accordance with the provisions of 22 Del. C. § 1601(c).

(Code 1981, § 19.5-20; Ord. of 6-27-1988; Ord. of 8-10-1998)

Sec. 102-74. Payment generally; documentary stamps generally.

(a) *Evidence of payment.* The payment of the tax imposed by this article shall be evidenced by the affixing of one or more documentary stamps to every document by the person making, executing, issuing or delivering such document, regardless of the situs of the actual making, executing, issuing or delivering of such document.

(b) *Affixing stamps.* Such stamps shall be affixed in such a manner that their removal will require the continued application of steam or water, and the person using or affixing such stamps shall cause such stamps to be canceled in such a manner that they may not be used again either:

(1) By writing or stamping, or by causing to be written or stamped thereon, the initials of

his name and the date upon which such stamps are affixed or used; or

(2) By complying with such other method of cancellation as the city assessor may prescribe.

(c) *Source of tax.* The tax imposed by this article shall be fully paid and have priority out of the proceeds of any judicial sale of real estate before any other obligation, claim, lien, judgment, estate or costs of the sale, and of the writ upon which the sale is made, and the sheriff or other officer conducting such sale shall pay the tax herein imposed out of the first moneys paid to him in connection therewith, unless previously paid by any party; provided, however, that any tax imposed by the state shall have priority over the tax imposed under this article.

(d) *Determination of tax.* The value for determining the tax shall be the highest of the following:

- (1) The bid price;
- (2) The amount of the mortgage not in excess of the fair value of the real estate;
- (3) The estimated full value;
- (4) The full and complete value pursuant to section 102-71.

(Code 1981, § 19.5-21; Ord. of 6-27-1988)

Sec. 102-75. Liability for payment as between parties.

As between the parties to any transaction which is subject to the real estate transfer tax imposed by this article, in the absence of an agreement to the contrary, the burden for paying such tax shall be on the grantor.

(Code 1981, § 19.5-22; Ord. of 6-27-1988)

Sec. 102-76. Recordation of documents.

(a) No document shall be recorded in the office of the recorder of deeds in and for the county unless one or more documentary stamps shall have been affixed thereto as provided in this article.

(b) The affixation of stamps to a document upon which a tax is imposed by this article, when lodged with or presented to the recorder of deeds, shall be an affirmation on the part of the transferor that the true, full, and complete value of the transaction is fully reflected in the amount of the stamps affixed thereto.

(c) Every document, when lodged with or presented to the recorder of deeds and city assessor, shall set forth therein, and as a part of such document, the true, full, and complete value thereof, or shall be accompanied by an affidavit, executed by a responsible person connected with the transaction, showing such connection and setting forth the true, full, and complete value thereof or the reason, if any, why such document is not subject to tax under this article.

(Code 1981, § 19.5-23; Ord. of 6-27-1988)

Sec. 102-77. Duties of city assessor.

In addition to the other duties of the city assessor:

(1) *Stamps.* The city assessor shall prepare and furnish adhesive stamps of such denominations and in such quantities as may be necessary for the payment of the tax imposed by this article and shall make provisions for the sale of such stamps in such places as may be deemed necessary.

(2) *Other evidence of payment.* The city assessor may, by regulations, provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing of documentary stamps.

(3) *Regulations.* The city assessor is charged with the enforcement of this article and is authorized and empowered to prescribe, adopt, promulgate, and enforce regulations relating to:

- a. The method to be used in affixing or cancelling of stamps in substitution for or in addition to the method and means provided in this article.
- b. The denomination and sale of stamps.
- c. Any other matter or thing pertaining to the administration and enforcement of this article.

(Code 1981, § 19.5-24; Ord. of 6-27-1988)

Sec. 102-78. Prohibited acts enumerated.

No person shall:

- (1) *Pay tax.* Make, execute, issue, deliver or accept, or cause to be made, executed, issued, delivered or accepted, any document without the full amount of tax due thereon under the provisions of this article being duly paid;
- (2) *Cancel stamp.* Make use of any documentary stamp to denote payment of any tax imposed by this article without cancelling such stamp as provided in section 102-74(b);
- (3) *Comply with regulations.* Fail, neglect or refuse to comply with, or otherwise violate, the regulations prescribed, adopted, and promulgated by the department [sic] under the provisions of this article;
- (4) *Cut stamp.* Fraudulently cut, tear or remove any documentary stamp from a document;
- (5) *Fraud.* Fraudulently affix to any document upon which a tax is imposed by this article any documentary stamp which has been cut, torn or removed from any other document upon which a tax is imposed by this article or any documentary stamp of insufficient value, or any forged or counterfeited stamp, or any impression of any forged or counterfeited stamp, die, plate or other article;
- (6) *Alter cancellation.* Willfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp with the intent to use or to cause the same to be used after it has already been used, or knowingly buy, sell, offer for sale or give away any such altered or restored stamp to any person for use, or knowingly use the same;
- (7) *Possess altered stamp.* Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which a tax is imposed by this article and the possession of such stamp shall be prima facie evidence of an intent to violate this subsection;
- (8) *Forged stamp.* Knowingly or willfully prepare, keep, sell, offer for sale or have in his possession any forged or counterfeited documentary stamp; or

(9) *Accept unstamped document.* Accept for recording in the office of any recorder of deeds any document upon which the realty transfer tax is imposed by this article without the proper documentary stamp or other evidence of payment of the tax affixed thereto as required by this article as is indicated in such document or accompanying affidavit.

(Code 1981, § 19.5-25; Ord. of 6-27-1988)

Sec. 102-79. Violations; penalties.

Any person guilty of conduct prohibited in section 102-78 shall, upon conviction, be punished by imposition of a fine of not more than \$100.00. Fines not paid within 14 days of the day the fine was issued, including the day the fine was issued, shall be automatically doubled in amount.

(Code 1981, § 19.5-26; Ord. of 6-27-1988; Ord. of 9-22-2003)

Secs. 102-80--102-110. Reserved.