

CHAPTER 10 REAL ESTATE TRANSFER TAX

1-10-1: TITLE:

This Chapter shall be known and may be cited as: *THE WINTER PARK REAL ESTATE TRANSFER TAX ORDINANCE*.

1-10-2: DEFINITIONS:

CONSIDERATION: The gross consideration paid for the real property affected by the "transfer" and shall include actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed, in return for the transfer of ownership or interests in real property, and shall include the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of the transfer. The term does not include as an addition to gross consideration the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-municipal corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by lease agreement not specifically exempted in Section [1-10-6](#), the consideration shall be deemed to be the capitalized value of the average annual rental unit of the lease, computed as follows: the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid shall be computed and the average annual rental shall be ten percent (10%) of the capitalized value. The payment of ad valorem real property taxes, insurance and the assumption of maintenance obligations shall not be included in the annual rent-capitalization computation; however, capital improvements required to be made shall be part of the actual consideration. When the average annual rental cannot be determined, or at the election of the Town Manager, the tax shall be based upon the appraised total value of the property covered by the lease as determined by an independent appraisal obtained by the Town Manager and paid for by the purchaser, or the capitalized value of the consideration in terms of the present worth of the stream of consideration under the lease and any other economic considerations to reflect the capitalized value of the transferred or leased property. (Ord. 101, Series of 1983)

DEED IN LIEU OF FORECLOSURE: A conveyance by a property owner to a secured party of property which is the subject of a mortgage, deed of trust or other security instrument in consideration of the cancellation of all or part of the indebtedness secured by such security instrument. (Ord. 171, Series of 1988)

PERSON: Any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

REAL ESTATE TRANSFER TAX: The tax imposed by this Chapter on the transfer of real property.

REAL PROPERTY: As defined by and under the laws of the State of Colorado.

TAXABLE LEASE: Any lease of real property with a term or initial term and all renewal terms which aggregate in length of twenty nine (29) years or more; provided lessee has possession or the right to possession on payment of rents. "Taxable lease" also means any lease of real property for less than twenty nine (29) years of term or initial term and all renewal terms aggregated if lessee has a clause which would permit lessee at its discretion to extend the lease beyond twenty nine (29) years or if lessee has an option to purchase some or all of the real property leased. If lessee has a lease with such an option to purchase which option may be exercised only within three (3) years after the date of the lease and option is entered into, then the land transfer tax

shall not be due and payable unless and until the exercise and consummation of such option. If any other lease with such an option to purchase is entered into, the real estate transfer tax shall be due and payable at the time of such transfer as transfer is defined herein.

TRANSFER: Transfer, whether or not the same is in writing or is recorded, means and includes (a) any sale, grant, assignment, transfer, exchange, or conveyance of any ownership or title to real property situated in the Town, (b) the sale, leasing, letting, conveyance, assignment or transfer of a possessory interest in real property, subject to the exemptions provided in this Chapter.

1-10-3: IMPOSITION OF TAX^B :

There is hereby imposed a tax on all transfers whether by deeds, contract instruments, writings, leases or any other documents or otherwise by which any lands, tenements or other interests in real property located in the Town are sold, granted, let, assigned, transferred, exchanged or otherwise conveyed to or vested in a purchaser, or purchasers thereof, or any other person or persons, except as may be specifically exempted by Section [1-10-6](#) hereof. Said tax shall be due and payable contemporaneously with the transfer of the real property as hereinafter specified.

1-10-4: PERSONS LIABLE FOR TAX:

Each purchaser and any other person or persons to whom a transfer is made, which transfer is subject to the tax imposed under Section [1-10-3](#) above, shall be jointly and severally liable for payment of the tax. The purchaser or person to whom a transfer is made shall remit the tax to the Town.

1-10-5: AMOUNT OF TAX:

The amount of tax payable in each case shall be as follows:

- A. Where there is no consideration or when the consideration is five hundred dollars (\$500.00) or less, no real estate transfer tax shall be payable.
- B. Where the consideration shall exceed five hundred dollars (\$500.00), the real estate transfer tax payable shall be one percent (1%) of the consideration, the proceeds of which tax shall be deposited in the General Fund or any special fund or funds of the Town the Town Council shall determine from time to time. (Ord. 101, Series of 1983)
- C. Where there is a taxable transfer between co-owners, the real estate transfer tax shall be determined in accordance with Section [1-10-14](#). (Ord. 171, Series of 1988)

1-10-6: EXEMPTIONS:

The real estate transfer tax imposed by this chapter shall not apply to:

- A. Any transfer wherein the United States, or any agency or instrumentality thereof, the state of Colorado, any county, city and county, municipality, district or other political subdivision of this state, is the grantee. (Ord. 182, Series of 1990)
- B. Any gift of real property, where there is no consideration other than love and affection or charitable donation.
- C. Any transfer by document, decree or agreement partitioning, terminating or evidencing termination, of a joint tenancy, tenancy in common or other co-ownership in real property;

however, if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such consideration.

- D. The transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise. (Ord. 101, Series of 1983)
- E. Transfers made pursuant to reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by whom such transfer was made if such owners have the same relative interests in said association or organization as they had in the real property immediately prior to said transfer and there is no consideration other than their respective interests in the new association or organization or the consideration does not exceed the purchase price originally paid by the transferor of that real property as demonstrated by records of the Grand County assessor. In the event that a transfer which otherwise meets the conditions set forth in this subsection E except that the consideration for such transfer exceeds the purchase price originally paid for the real property, the tax imposed hereby shall be imposed only as to the amount of the subsequent purchase price that exceeds the original purchase price. (Ord. 389, Series of 2006)
- F. Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the bankruptcy code ^f or in an equity receivership proceeding.
- G. Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustment; removing clouds on titles; or granting rights of way, easements or licenses.
- H. Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.
- I. Any transfer of cemetery lots.
- J. Any lease of any real property (or assignment or transfer of any interest in any such lease) provided the terms and conditions of such lease do not constitute a taxable lease of the property.
- K. Any mineral transfer or royalty transfer.
- L. Transfers to secure a debt or other obligation, or releases of real property which is security for a debt or other obligation.
- M. An executory contract for the sale of real property of less than three (3) years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto or any assignment or cancellation of any such contract.
- N. Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into between the seller and purchaser prior to the date of adoption of this chapter pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before November 1, 1983.
- O. Any transfer that is made pursuant to a valid and legally enforceable presale contract: 1) entered into between a seller and a purchaser prior to the date of adoption of this chapter; 2)

pursuant to which transaction the deed or instrument of conveyance is executed and recorded on or before January 1, 1984. A "presale contract" is defined as a valid and legally enforceable contract for the sale of real property which has been signed prior to the commencement of construction of improvements thereon, to be closed following completion of the improvements and pursuant to which contract seller is obligated to construct the improvements to the property after the contract is signed and prior to the closing date of the contract.

P. Any sale or conveyance of real property or improvements for the purpose of constructing, or providing low or moderate priced housing units for sale or lease to low or moderate income persons; provided, that the parties to the transaction shall apply to the town manager for the exemption prior to its being allowed, and the parties shall agree to appropriately restrict the future use of the property to low and moderate priced housing units by recorded agreement, deed, restrictions, covenants, declarations, or similar instrument as may be required by the town council.

Q. Simultaneous interim transfers to accommodate "like kind" exchanges pursuant to section 1031(a) IRC, provided the end transferees in such transactions shall be subject to the transfer tax on real property ultimately received by them in such transaction. (Ord. 101, Series of 1983)

R. Any transfer by deed in lieu of foreclosure, on the condition that:

1. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee, or beneficiary (as determined at the time of the transfer by deed) of the debt or instrument which is being canceled, in whole or in part, in exchange for the transfer; and

2. Such transfer shall be exempt only to the extent of the current amount of the debt which is being canceled in exchange for the transfer.

S. Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale, foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust or other security instrument, or court decree of lien foreclosure, on the condition that:

1. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee, or beneficiary (as determined at the time of the commencement of foreclosure or execution) of the debt or instrument which is the basis of the proceeding, or such person or entity is a junior lienor exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution; and

2. Such transfer shall be exempt only to the extent of the current amount of the obligation satisfied at the execution or foreclosure sale, plus any obligations to prior lien holders paid from the sale; and

3. The certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall, if the above described conditions are met, be exempt from the within transfer tax. If the conditions are not so satisfied, there shall be a tax imposed as provided herein, at the time of the issuance of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale, which payment shall be made to the town in escrow. If no redemption is made by the owner, the tax shall become absolute to the town upon expiration of owner's redemption periods. If redemption is made by owner, the tax shall be refunded to the person who paid it to the town. A transfer of the certificate of

purchase or other evidence of purchase issued by the person or entity conducting the sale shall be subject to a transfer tax. The deed issued by the person or entity conducting the sale is not a transfer subject to the transfer tax. (Ord. 171, Series of 1988)

- T. Simultaneous interim transfers of an individual parcel provided the end transferees in such transactions shall be subject to the transfer tax on real property received by them in such transaction. (Ord. 394, Series of 2007)

1-10-7: APPLICATION FOR EXEMPTION:

- A. In the event of any transfer claimed to be exempt from the real estate transfer tax herein imposed, the grantor or purchaser shall apply for and obtain from the town manager a certificate of exemption, which may be affixed to the deed or instrument of transfer. The burden of proving any exemptions shall in all cases be upon the one claiming it. Provided, further, that the exemption provided in section 1-10-6 of this chapter shall be allowed only with a certificate of exemption issued by the town manager prior to the date of the transfer tax is payable to the town. The certificate of exemption shall be in substantially the following form:

EXEMPTION FROM REAL ESTATE

TRANSFER TAX

The undersigned, as purchaser pursuant to a deed or other instrument of transfer from to dated , hereby applies for exemption from the payment of the Real Estate Transfer Tax, imposed by Ordinance No. , Series of 198__ , of the Town of Winter Park. The basis of such exemption is as follows:

(State briefly grounds for exemption, including applicable section and subdivision of Ordinance No. , Series 198).

I hereby certify this day of , 19 , under penalty of perjury that the foregoing statements are true and correct.

Purchaser

ertificate of Exemption

I hereby certify this day of , 19 , that the above described transfer of real property is exempt from the payment of Real Estate Transfer Tax under Ordinance No. , Series 19 .

Town Manager

- B. Any person whose claim of exemption duly applied for under the provisions of this section is denied by the town manager may immediately appeal to the town council for a determination of such exemption and such appeal shall be considered by the town council within thirty (30) days of receipt of the same. In the event of a determination by the town council favorable to the appellant, any amount previously deposited, or so much thereof as may be allowed by the town manager, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the town council within thirty (30) days of the receipt of the appeal, the decision will be deemed favorable to the appellant, unless appellant has obtained a continuance of the matter, in which case the town council shall make its decision within six (6) months after receipt of the appeal.

- C. In case of an application for an exemption which is not granted before the transfer takes place, the tax shall be paid as required by this chapter. Thereafter if the exemption shall be allowed, upon application to the town manager, the person who has paid said tax shall qualify for refunding pursuant to the exemption granted. (Ord. 101, Series of 1988)

1-10-8: LANDS AFFECTED BY TAX:

When a transfer subject to this chapter includes real property located within the town of Winter Park and real property located elsewhere, the tax imposed under the authority of this chapter shall be computed only with respect to real property located within the town and the tax shall be assessed based on that part of the consideration fairly attributable to such real property located within the town. (Ord. 101, Series of 1988)

1-10-9: ENFORCEMENT:

- A. The town manager is charged with the provisions of this chapter and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining thereto.
- B. At the time of any transfer upon which a tax is imposed or which is claimed to be exempt under this chapter, there shall be made a report to the town manager on forms prescribed by him, setting forth the true, complete and actual consideration for the transfer, the name of the parties thereto, the location of the real property transferred, the basis of the claimed exemption, and such other information as he may require.
- C. For the purpose of collection of the taxes imposed by this Chapter, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate agencies, or other closing agents or agencies, permitted as such to do business under the laws of the State of Colorado may collect the real estate transfer tax (holding said funds in trust for the Town) and remit the same to the Town for and on behalf of the purchaser, forthwith. Said funds shall not be commingled with other funds of the collector.
- D. The Town Manager is hereby authorized to negotiate and enter into an inter-governmental contract with appropriate officers of Grand County for the collection of this tax, including the payment of a fee to the County officers for said collection.
- E. In the event purchaser fails or refuses to provide full and complete information regarding the consideration paid for transfer of real property subject to the transfer tax, the Town Manager may obtain an independent appraisal at purchaser's cost and the transfer tax will be computed on the appraised value as determined by said appraiser. (Ord. 101, Series of 1988)

1-10-10: DUE DATES, DELINQUENCIES, PENALTIES, INTEREST, EVASION:

- A. The tax imposed under this Chapter is due and payable at the time of the transfer, and is delinquent if it remains unpaid for thirty (30) days thereafter. In the event that the tax is not paid prior to becoming delinquent, a delinquency penalty of ten percent (10%) of the amount of tax due shall accrue. In the event a portion of the tax is paid prior to becoming delinquent, the penalty shall only accrue as to the portion which is delinquent. Interest shall accrue at the rate of one and one-half percent (1.5%) per month, or fraction thereof, compounded annually, on the amount of tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Town shall also be entitled to recover the reasonable expenses of collection, including reasonable attorney fees and court costs. Such costs of collection, interest and penalties shall become part of the tax. (Ord. 171, Series of 1988)

- B. Any person liable for a real estate transfer tax upon a transfer who shall cause the deed, instrument of conveyance or document evidencing said transfer to be filed of record in the office of the Grand County Clerk and Recorder or attempt to so record the document until and unless the real estate transfer tax and all penalties and interest thereon have been paid in full, shall be in violation of this Chapter.
- C. Notwithstanding the provisions of Section 1-10-6, if an artifice or device is employed in connection with the transfer of real property, which term "artifice or device" means a transaction or transactions a substantial purpose of which was to evade the provisions of this Chapter and the imposition of the tax hereunder, then such transfer will nevertheless be subject to the real estate transfer tax. "Artifice or device" includes, but is not limited to, 1) a transfer to a corporation, partnership, limited partnership, joint venture, business trust, or other association or organization followed within three (3) years by an assignment of the controlling interest in such association or organization, 2) such a transfer plus the intent to ultimately assign the controlling interest in such association or organization.

1-10-11: LIEN:

- A. The tax imposed by this Chapter, and any penalty and interest due thereon, if not paid when due, and all costs of collection of said tax, penalty and interest, shall constitute a perpetual lien on the real property transferred in the amount applicable to each lot or parcel of real property transferred and shall have priority over all other liens except general tax liens and special improvement district assessment liens. Except as aforesaid, the lien for said tax shall be and until paid shall remain a first and prior lien superior to all other liens or claims of whatsoever kind or nature. Said lien shall continue until the amount thereof is paid or until its discharge of record by foreclosure or otherwise.
- B. The recording of this Chapter in the office of the Clerk and Recorder of the County of Grand, State of Colorado, shall constitute notice to all persons interested in the transfer of real property of the existence of and the lien imposed by the real estate transfer tax.
- C. If the tax is unpaid and delinquent, the Town Manager shall give written notification to the purchaser or person to whom the transfer is made at the address shown on any deed or instrument evidencing the transfer, or his last known address, of said delinquency. Said notification shall be mailed certified or registered mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within thirty (30) days of the effective date of the notification, the Town Manager shall commence foreclosure of the lien for said tax in the same manner as the foreclosure of a mortgage in accordance with Colorado law ¹⁰.
- D. The amount of the tax, penalty and interest imposed under the provisions of this Chapter shall be deemed a debt to the Town. Any person owing money to the Town under the provision of this Chapter shall be liable to an action brought in the name of the Town for the recovery of such amount.
- E. Any person who shall fail or refuse to pay any tax due hereunder may be punished by a fine not exceeding three hundred dollars (\$300.00).
- F. Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

1-10-12: REVIEW:

The Town Manager shall prepare a report of the receipts from the real estate transfer tax expenditures made in the preceding fiscal year, funds into which the proceeds have been deposited, the disposition of those funds, and the projected revenue and expenditures for the next fiscal year. (Ord. 101, Series of 1983)

1-10-13: EFFECTIVE DATE:

The effective date of this Chapter shall be August 1, 1983. (Ord. 101, Series of 1983)

1-10-14: TRANSFER BETWEEN CO-OWNERS:

A. A nonexempt transfer from one or more co-owners to another co-owner or co-owners is taxable in accordance with this Section. The real estate transfer tax payable with respect to such transfer shall be one percent (1%) of the gross consideration paid by the grantee to the grantor for the transfer. Notwithstanding the definition of "consideration" contained in Section [1-10-2](#), for the purpose of this Section [1-10-14](#), "gross consideration" shall mean and include:

1. Actual cash paid, the money equivalent of real and personal property delivered or conveyed in exchange for the transfer, or contracted to be paid or delivered or conveyed in return for the transfer; plus

2. The amount of any lien, mortgage, contract, indebtedness or other encumbrance or debt given to secure the purchase price, or any part thereof; plus

3. The grantor's proportionate share of the unpaid balance of any debt which is owed against the property at the time of the transfer and not satisfied in connection with such transfer. For purposes of this subsection A3, the "grantor's proportionate share of any unpaid debt which is owed against the property at the time of the transfer" shall be determined by multiplying the grantor's fractional or percentage ownership interest in the property prior to the transfer, times the unpaid balance of such debt existing as of the time of the transfer.

B. The term "gross consideration" does not include as an addition thereto the amount of any outstanding lien or encumbrance in favor of any government or quasi-government corporation or district for taxes, special benefits or improvements.

C. The real estate transfer tax on any transfer between co-owners by lease agreement shall be determined in accordance with the definition of "consideration" contained in Section [1-10-2](#). (Ord. 171, Series of 1988)