

Sponsor: Mayor Dale Rife
First Reading: 12/5/11
Second Reading: 1/9/12

ORDINANCE #21-11

THE TOWN OF WYOMING REALTY TRANSFER TAX ORDINANCE

BE IT HEREBY ENACTED by the Town Council of the Town of Wyoming, a majority thereof concurring in council duly met, that Ordinance #21-11 "The Town of Wyoming Realty Transfer Tax Ordinance" be and hereby is enacted, as follows to wit:

Section 1. Definitions. For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Town Clerk: The Town Clerk of the Town of Wyoming.

Document: Any deed, instrument, or writing whereby any real estate within the corporate limits of the Town of Wyoming, or any interest therein, shall be quitclaimed, granted, bargained, sold, or otherwise conveyed to the grantee, but shall not include the exceptions set forth in 30 Del. C. §5401 (1), which exceptions are hereby adopted and incorporated herein by this reference. The provisions of 30 Del. C. §§5401 (4), (5), (6), (7), and (8) are also hereby adopted and incorporated herein by this reference.

Transaction: The making, executing, delivering, accepting, or presenting for recording of a document.

Value: 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 thereof, including liens or other encumbrances thereon and ground rents, or a commensurate part of the liens or other encumbrances 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, "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 "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.

Section 2. Levy of tax; exemptions.

(a) 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 to the vellum, parchment, or paper upon which such document is written or printed, a tax at the rate of one and one-half percent (1.5%) 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; said tax is to be apportioned equally between grantor and grantee unless otherwise provided for by agreement of the parties.

(b) 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) Where a person acquires title to any lands, tenements, or hereditaments for the purpose of holding 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.

Section 3. Payment of tax generally; documentary stamps generally.

(a) The payment of the tax imposed by this Ordinance shall be evidenced by the use of a mechanical, electronic device indicating the amount of tax imposed.

(b) The evidence of payment and the collection of the tax shall be collected by the Kent County Recorder of Deeds at the time of recordation of the document.

(c) The Town of Wyoming will provide to the Kent County Recorder of Deeds the mechanical or electronic device to indicate the amount of tax imposed if required by the Kent County Recorder of Deed.

(d) The Kent County Recorder of Deeds may charge a reasonable fee for the collection of the tax imposed and shall forward the tax to the Town of Wyoming.

(e) The tax imposed by this Ordinance 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 Ordinance. 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 as defined in Section 1 of this Ordinance.

Section 4. Liability for payment of tax as between parties. As between the parties to any transaction which is subject to the real estate transfer tax imposed by this Ordinance, in the absence of an agreement to the contrary, the burden for paying such tax shall be on the grantor.

Section 5. Recordation of Documents.

(a) No document shall be recorded in the Office of the Recorder of Deeds in and for Kent County unless one or more documentary stamps shall have been affixed thereto as provided in this Ordinance.

(b) The affixation of stamps to a document upon which a tax is imposed by this ordinance when lodged with or presented to the Recorder of Deeds and Town Clerk 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 Town Clerk 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 Ordinance.

Section 6. Functions of the Town Clerk. In addition to the other duties of the Town Clerk, the Town Clerk shall have the following responsibilities:

(a) The Town Clerk 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 Ordinance and shall make provisions for the sale of such stamps in such places as may be deemed necessary.

(b) The Town Clerk may by regulation provide for the evidence of the payment of the tax to be shown on the document by means other than the affixing or documentary stamps.

(c) The Town Clerk is charged with the enforcement of this Ordinance and is authorized and empowered to prescribe, adopt, promulgate, and enforce regulations relating to:

- (1) 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 Ordinance;
- (2) The denomination and sale of stamps;
- (3) Any other matter or thing pertaining to the administration and enforcement of this Ordinance.

Section 7. Prohibited Acts Enumerated. No person shall:

(a) Make, execute, issue, and 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 provision of this Ordinance being duly paid;

(b) Make use of any documentary stamp to denote payment of any tax imposed by this Ordinance without cancelling such stamp as provided by this Ordinance;

(c) Fail, neglect, or refuse to comply with, or otherwise violate, the regulations prescribed, adopted, and promulgated under the provisions of this Ordinance;

(d) Fraudulently cut, tear, or remove from a document any documentary stamp;

(e) Fraudulently affix to any document upon which a tax is imposed by this Ordinance any documentary stamp which has been cut, torn, or removed from any other document upon which a tax is imposed by this Ordinance 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;

(f) Willfully remove or alter the cancellation marks of any documentary stamp, or restore any such documentary stamp, with 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;

(g) Knowingly have in his possession any altered or restored documentary stamp which has been removed from any document upon which tax is imposed by this Ordinance, and the possession of such stamp shall be prima facie evidence of an intent to violate this clause;

(h) Knowingly or willfully prepare, keep, sell, offer for sale, or have in his possession any forged or counterfeited documentary stamps; or

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

Section 8. Penalty For Violations. Any person guilty of conduct prohibited in Section 7 shall upon conviction be punished by imposition of a fine of not more than One Hundred Dollars (\$100.00).

Section 9. Use of Funds. In accordance with the provisions of 22 Del. C. §1601(c), any funds realized by the Town of Wyoming pursuant to this Ordinance shall be segregated from the Town's general fund, and said funds, together with all interest thereon, shall be expended solely for the capital and operating costs of public safety services, economic development programs, public works services, capital projects and improvements, infrastructure projects and improvements, and debt reduction.

Section 10. Effective Date. This Ordinance shall become effective immediately upon its enactment into law.

Synopsis

This ordinance sets forth the tax rate on the transfer of real property in the Town of Wyoming as one and one-half percent (1.5%). This ordinance outlines the procedures for payment of the transfer tax and the recording of documents, along with outlining who is responsible for paying the tax. The duties of the Town Clerk are specified, and acts specifically

