

TRANSFER TAX ORDINANCE
FOR WASHINGTON COUNTY, MARYLAND

Adopted July 15, 2003
Effective August 7, 2003

Revision 1 - Adopted September 14, 2004
Effective as of July 1, 2004.

Section 1. Definitions.

For the purposes of this Ordinance, the following definitions describe the meaning of the terms used.

(a) *Board* means the Board of County Commissioners of Washington County.

(b) *Clerk* means the Clerk of the Circuit Court for Washington County.

(c) *Consideration* means everything of value included in the actual price of real property conveyed, including cash; bonds, stock; documents evidencing monetary value; choses in action; real or personal property; payment by way of fees; labor or services; and instruments of credit, including notes, notes secured by deeds of trust or mortgages and assumption of liability for debt incurred by another, but not for current property taxes or county or municipal charges.

(d) *Department* means the Department of Assessments and Taxation.

(e) *Estate* means every kind of interest in real property, including a fee simple estate, leasehold estate, limited estate, life estate, remainder and other legal and equitable interests in real property.

(f) *Instrument of writing* means a written instrument that conveys title to or a leasehold interest in real property, and includes:

(1) A deed or contract.

(2) A lease.

(3) An assignment of a lessee's interest.

(4) Articles of transfer.

(5) Articles of merger or other document that evidences a merger of foreign corporations or foreign limited partnerships.

(6) Articles of consolidation or other document that evidences a consolidation of foreign corporations.

Instrument of writing does not include:

(1) A mortgage or deed of trust or other contract that creates an encumbrance on real property.

(2) A security agreement, as defined in Md. Code, Tax-Property Article, §12-101(e).

(g) *Mortgage* includes a deed of trust made to secure the repayment of an indebtedness.

Section 2. Imposition of tax; Exemptions.

(a) **Tax Imposed.** Except as otherwise provided in this section, a county transfer tax is imposed on an instrument of writing:

- (1) recorded with the Clerk; or
- (2) filed with the Department.

(b) **Rate of Tax.** Except as provided in subsection (c) of this section, the rate of the county transfer tax is 0.5% of the consideration payable for the instrument of writing. The consideration includes the amount of any mortgage or deed of trust assumed by the grantee.

(c) **First-time Washington County home buyer.**

(1) In this subsection (c), "first-time Washington County home buyer" means an individual who:

- a. has never owned residential real property in Washington County that has been the individual's principal residence,
- b. has been a resident in Washington County continuously for twelve months prior to this purchase, and
- c. has purchased a residence for a total consideration of less than \$115,000.

(2) If there are two or more grantees, this subsection does not apply unless each grantee is a first-time Washington County home buyer or a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in Md. Code, Tax-Property Article, §12-108(i) for the property and the co-maker or guarantor will not occupy the residence as the co-maker's or guarantor's principal residence.

(3) Notwithstanding any other provision in this subparagraph (c), for a sale of improved residential real property to a first-time Washington County home buyer who will occupy the property as a principal residence, the rate of the transfer tax is 0.25% of the consideration payable for the instrument of writing and the transfer tax shall be paid entirely by the seller.

(4) To qualify for the exemption under paragraph (3) of this subsection, each grantee or an agent of the grantee shall provide a statement that is signed under oath by the grantee or agent of the grantee stating that:

- (i) 1. The grantee is an individual who has never owned residential real property in Washington County that has been the individual's principal residence;
2. The residence will be occupied by the grantee as the grantee's principal residence; and
3. The grantee has been a resident in Washington County continuously for twelve months prior to this purchase, or

(ii) 1. The grantee is a co-maker or guarantor of a purchase money mortgage or purchase money deed of trust as defined in Md. Code, Tax-Property Article, §12-108(i) for the property; and

2. The grantee will not occupy the residence as the co-maker's or guarantor's principal residence.

(5) A statement under paragraph (4) of this subsection by an agent of a grantee shall state that the statement:

(i) Is based on a diligent inquiry made by the agent with respect to the facts set forth in the statement; and

(ii) Is true to the best of the knowledge, information, and belief of the agent.

(d) Anything in this Section 2 to the contrary notwithstanding, the county transfer tax shall not apply to:

(1) The first \$50,000 of consideration.

(2) An instrument of writing exempt from the state transfer tax under Md. Code, Tax-Property Article, §13-207.

(3) A transfer of land subject to the agricultural land transfer tax under Title 13, Subtitle 3, of the Tax-Property Article of the Annotated Code of Maryland.

Section 3. Payment.

The county transfer tax shall be paid to the Clerk where the instrument of writing is recorded or to the Department, where the instrument of writing is required to be filed with that Department. Payment of the tax shall be evidenced by the affixing to or stamping on the instrument offered for recordation or filing a legend stating that the county transfer tax has been paid and the amount of the payment. An instrument so executed shall be prima facie evidence that the tax has been paid. No such instrument of writing shall be recorded among the Land Records of Washington County, Maryland or filed with the Department until such time as the county transfer tax shall have been paid.

Section 4. Use of Proceeds.

The proceeds from the county transfer tax shall only be used to fund (i) school renovation and construction; (ii) primary, secondary, or higher education capital expenditures; (iii) public safety capital expenditures; (iv) public infrastructure projects; and (v) debt reduction, except that for each fiscal year, at least \$400,000 of the revenues from the transfer tax shall be used for agricultural preservation and other measures to enhance the viability of agriculture in Washington County, including the purchase of

easements and transferrable development rights using installment purchase agreements.

Section 5. Records.

The Board shall state in the annual budget:

- (a) An estimate of the revenue to be received from the county transfer tax for both the current and following fiscal years.
- (b) The revenue received from the county transfer tax during the previous fiscal year.
- (c) The projects for which the Board anticipates the proceeds from the county transfer tax will be used.
- (d) The application of funds to as directed in Section 4 of this Ordinance.

Section 6. Responsibility of Payment.

The tax levied by this section, together with interest and penalties, is from the time due and payable jointly and severally the debt of the legal and equitable transferor and transferee of the property.

Section 7. Penalties for unpaid taxes.

Whenever a written instrument intending to effect a transfer subject to the county transfer tax is recorded by the Clerk or filed with the Department without the tax having been paid, the person liable for the payment of the tax shall be assessed for the amount of the tax due, plus interest at the rate of 1% for each month, or fractional part of a month, from the date when the written instrument was received for recordation or filing, plus a civil penalty of 15% of the tax due. All taxes, interest and penalties assessed under this subsection shall be paid to the Clerk or the Department.

Section 8. Payment required prior to recordation.

Whenever a lease required by law to be recorded evidences a transfer on which a tax would be levied by this Ordinance if the lease were offered for record and recorded but the lease has not been recorded, an attornment agreement, memorandum of lease, assignment of lease or other instrument giving or intended to give actual or constructive notice of the unrecorded lease, whether or not actually giving constructive notice in point of law, may not be received for recording until the original lease has been exhibited to the Clerk and a tax paid in the same amount as would be payable on recording of the lease, together with whatever tax may be payable on the other instrument under this section. The tax applicable to a lease in accordance with this

subsection is chargeable to the lessee. If it is required to be advanced by the party offering for record the other instrument referred to in this subsection due to the failure or refusal of the lessee to pay the amount due to the Clerk on demand by that party, the amount due plus interest from the date of payment shall be recoverable by that party from the lessee in an action at law.

Section 9. Determination of tax amount.

(a) The consideration for a lease for a term of years that is not perpetually renewable shall be computed as set forth in Md. Code, Tax-Property Article, § 13-205.

(b) Where part or all of the consideration for a transfer consists of other property, real or personal, the consideration represented by the other property is the value of the property, determined as follows:

(1) The consideration represented by a full interest in property is the true, full value of the property.

(2) The consideration represented by a life estate is the value of the life estate as determined in accordance with the regulations for federal estate tax adopted by the Internal Revenue Service.

(3) The consideration represented by a remainder or reversion after one or more life estates is the value remaining after determining the value of the whole and deducting from the whole the value of the preceding estates.

Section 10. Powers of Clerk.

To carry out and enforce this Ordinance and to collect the tax levied by this section, with concurrence of the Board, the Clerk may:

(a) Adopt rules and regulations consistent with this section to carry out and enforce this section, to collect fully the tax levied by this section or to define or define further or construe this Ordinance.

(b) Compromise disputed claims in connection with the tax imposed by this section.

(c) For good and sufficient cause, abate or remit interest and penalties.

(d) Rebate and refund any taxes erroneously or improperly paid.

Section 11. Sums to be remitted to Board.

The Clerk shall promptly remit the balance of tax collected to the Board and shall deliver a full and accurate accounting of the collections during the preceding calendar month to the Board in a timely manner.

Section 12. Prohibitions; violations and penalties.

(a) A person may not:

(1) Willfully obtain or attempt to obtain the recording of a conveyance effecting a transfer taxable under this section without first having paid the tax.

(2) Knowingly make a false statement as to the amount or value of consideration.

(3) Willfully affix or attempt to affix to any document a forged or counterfeit legend indicating that the tax levied by this section has been paid.

(4) Willfully violate any of the provisions of this section or the rules and regulations adopted under this Ordinance.

(5) Willfully participate or aid in any manner in the evasion of the tax imposed by this section.

(b) A person who violates any provision of this section is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding six months, or both.

Section 13. Severability.

In the event that any portion of this Ordinance is found to be unconstitutional, illegal, null or void by a court of competent jurisdiction, it is the intent of the Board to sever only the valid portion or provision, and that the remainder of this Ordinance shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of this Ordinance, or unless deletion of the invalid portion would produce a result inconsistent with the purpose and intent of the Board in enacting this Ordinance.

Section 14. Effective Date.

Enacted on the 15th day of July, 2003.

Effective on the 7th day of August, 2003.

Revision 1 adopted September 14, 2004, effective as of July 1, 2004.

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