

**CITY OF HARRINGTON
ORDINANCE NO. 18-04**

**AN ORDINANCE AMENDING CHAPTER 378, TAXATION, OF THE CODE OF
THE CITY OF HARRINGTON RELATED TO THE REALTY TRANSFER TAX**

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
HARRINGTON IN COUNCIL MET:

Section 1. That Article I, Realty Transfer Tax, shall be amended by deleting the existing article and substituting in lieu thereof the following:

Article I. Realty Transfer Tax.

§ 378-1. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

DOCUMENT

A. 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:

- (1) Any will;
- (2) Any lease;
- (3) Any mortgage;
- (4) Any conveyance between corporations operating housing projects pursuant to Chapter 45 of Title 31 of the Delaware Code, and the shareholders thereof;
- (5) Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;
- (6) Any conveyance to nonprofit industrial agencies;
- (7) Any conveyance between husband and wife;
- (8) 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;

- (9) Any conveyance between parent and child or the spouse of such a child;
- (10) Any conveyance:
 - (a) To a trustee, nominee or straw party for the grantor as beneficial owner;
 - (b) 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
 - (c) From a trustee, nominee or straw party to the beneficial owner;
- (11) Any conveyance between a parent corporation and a wholly owned subsidiary corporation; provided that such conveyance is without actual consideration;
- (12) Correctional deeds without actual consideration;
- (13) Any conveyance to or from the United States, this state or to any of their instrumentalities, agencies or political subdivisions;
- (14) Any conveyance by the owner of 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;
- (15) 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;
- (16) 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 to 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;

- (17) Any conveyance to or from a nonprofit corporation organization of real estate acquired for the purpose of rehabilitation and resale without profit;
- (18) Any transfer 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 transferred; provided, however, that this shall not apply to any distribution in liquidation or other transfer resulting from the 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.
- (19) 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 under 30 Del. C. § 5402 shall be exempt;
- (20) Any conveyance of a "mobile home" as defined in 25 Del. C. § 7003, provided tax on said conveyance has been paid under 30 Del. C. § 3002;
- (21) Any conveyance without consideration to an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code;
- (22) Any conveyance to a nonprofit conservation organization when the property is purchased for open space preservation purposes;
- (23) Any conveyance to or from an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code when the purpose of said conveyance is to provide owner-occupied housing to low- and moderate-income households by rehabilitating residential properties and reselling said properties without profit;
- (24) Any conveyance between siblings, half siblings, or step siblings.

B. The term "document" defined in Subsection A shall include the following:

- (1) 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;
- (2) 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;

- (3) 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 structure which is intended for residential use, and excluding any commercial unit subject to tax under 30 Del. C. § 2301, Subsection (6), Paragraph (88), relating to commercial lessors.

FIRST-TIME HOME BUYER

A natural person who, individually or as a co-tenant, has at no time held any interest in residential real estate, wherever located, and which has been occupied as his or her principal residence, and who intends to occupy the property being conveyed as his or her principal residence within 90 days following recordation.

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.

§ 378-2. Levy of tax; amount; 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 of the vellum, parchment or paper upon which such document is written or printed, a tax at the rate of 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.
- D. There shall be no tax imposed on the grantees' portion only of those transfers where all grantees qualify as first-time home buyers. For purposes of this article, "first-time home buyer" shall have that meaning given in § 378-1. The first-time home buyer must file an affidavit certifying to his/her 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.

§ 378-3. Priority of tax; determination of value; collector of tax; evidence of payment.

- A. Priority 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/her 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.
- B. Determination of value. 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 the definition of "value" in § 378-1.
- C. Collector of tax. The settlement attorney, the Kent County Recorder of Deeds, or such other person or entity as determined by the city shall be the collector of the tax imposed by this article.

D. Evidence of payment. The payment of the tax imposed by this article shall be evidenced by a notation of payment on the document. The collector shall note on the document the payment of the tax, the amount of payment, and the date of payment. Such notation shall be conclusive evidence of payment as to any subsequent purchaser relying thereon.

§ 378-4. Prohibited acts enumerated.

A. No person shall 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.

B. No person shall 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 evidence of payment of the tax affixed thereto as required by this article as is indicated in such document or accompanying affidavit.

C. No person shall submit a false affidavit in any respect, which would entitle them to the first-time home buyer exemption.

§ 378-5. Violations and penalties.

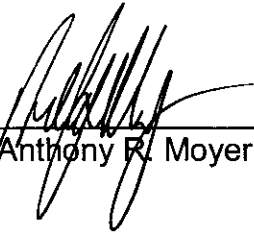
Any person who violates this article shall be deemed to be guilty of a misdemeanor and, upon conviction in a court of competent jurisdiction, shall be fined not more than \$500 and imprisoned for not more than one year, or both, and in addition shall be required to pay to the city any unpaid transfer tax plus accrued interest at the rate of one and one-half percent per month and upon direction by the City Council, shall be referred to the attorney general of the State for criminal prosecution.

§ 378-6 to 378-8 Reserved.

Repealer. All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Effective Date. The Clerk of Council shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take effect and be in force from and after its approval by Council.

SO ORDAINED by the majority of Council Members present at a regular session of Harrington City Council, to be effective upon signing.



Anthony R. Moyer, Mayor

Attest: 

Kelly Blanchies, Clerk of Council

Date of Adoption: April 16, 2018

SYNOPSIS

This Ordinance amends regulations regarding the realty transfer tax to state that the first-time home buyer exemption applies to only the buyer's part of the transfer tax and to remove language regarding documentary stamps which are no longer used.

First Reading: March 19, 2018

Public Hearing: April 16, 2018

Second Reading: April 16, 2018