



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

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PROPOSED ORDINANCE AMENDMENT

COOK COUNTY REAL PROPERTY TRANSFER TAX ORDINANCE

BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 74, Taxation, Article III, Real Estate Transfer Tax, Section 74-100 through 74-113 of the Cook County Code is hereby amended as Follows:

Sec. 74-100. Short title.

This article shall be known and may be cited as the Cook County Real Property Transfer Tax Ordinance.

Sec. 74-101. Definitions.

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:

Affix (or affixed, affixing) shall mean physically or electronically indicated.

Beneficial interest in real property includes, but is not limited to:

(1) The beneficial interest in an Illinois land trust;

(2) The lessee interest in a ground lease (including any interest of lessee in the related improvements) that provides for a term of 30 or more years when all options to renew or extend are included, whether or not any portion of the term has expired; or

Controlling interest means:

(1) Fifty percent or more of the combined voting power or fair market value of all ownership interests or beneficial interests in a real estate entity, whether the interests are owned by one or by several persons; or

(2) The right of one or of several persons to receive at the time of any distribution 50 percent or more of the income or profits of a real estate entity.

Real Estate entity means any person (other than an Illinois land trust) including, but not limited to, any partnership, corporation, limited liability company, trust, single or multi-tiered entity, or any other entity that exists or acts substantially for the purpose of holding, directly or indirectly, title to or beneficial interest in real property whether for personal use, the production of rental income, or investment. It shall be presumed, unless proven otherwise, that an entity is a real estate entity if it owns, directly or indirectly, real property having a fair market value greater than 75 percent of the total fair market value of all the entity's assets (determined without deduction for any mortgage, lien or encumbrance).

Recorder or Recorder of Deeds means the County Recorder of Deeds or the County Registrar of Titles.

Tax stamp means a physical, electronic or alternative indicia that indicates the amount of tax paid. *Transfer price* means the consideration furnished for the transfer of title to, or beneficial interest in, real property, valued in money, whether paid in money or otherwise, including cash, credits and property, determined without any deduction for mortgages, liens or encumbrances, and specifically including the amount of any indebtedness or obligation cancelled or discharged in connection with the transfer. In the case where the controlling interest in a real estate entity is transferred, and the real estate entity holds assets in addition to title to or beneficial interest in real property located in the city, the term "transfer price" means only that portion of the consideration attributable to the transfer of such real property or such beneficial interest.

Sec. 74-102. Tax imposed.

(a) Except as otherwise provided in this chapter, a tax is imposed upon the privilege of transferring title to, or beneficial interest in, real property located in the County whether or not the agreement or contract providing for the transfer is entered into in the County. The tax shall be at the rate of \$0.25 per \$500.00 of the transfer price, or fraction thereof, of the real property or the beneficial interest in real property. If, however, the real estate is transferred subject to a mortgage, the amount of the mortgage remaining outstanding at the time of transfer shall not be included in the basis of computing the tax.

(b) Every trustee of a land trust holding title to land which is located in the County shall upon the transfer, conveyance or assignment of any beneficial interest in a land trust so report such transfer, conveyance or assignment to the Recorder of Deeds in a manner prescribed by the Recorder which shall show the transfer, conveyance or assignment price of the beneficial interest, transferred, conveyed or assigned.

(c)

(1) The tax imposed by this article is due upon the earlier of the delivery or recording of the deed, assignment or other instrument of transfer.

(2) In the case of an assignment of a beneficial interest in a trust, delivery shall be deemed to occur when the trustee receives possession of a valid assignment of the beneficial interest. In the case of other transfers, delivery shall be deemed to occur when the transferee, or the transferee's representative or agent, receives or becomes entitled to receive possession of the instrument of transfer.

(d) The primary incidence of the tax and the obligation to pay the tax are on the seller, grantor, assignor or other transferor; provided however, that if the transferor is exempt from the tax solely by operation of State law, then the incidence of the tax and obligation to pay the tax shall be upon the transferee.

(e) The tax imposed by this article shall be due whether the transfer of a controlling interest in a real estate entity is ~~effected~~ affected by one transaction or by a series of related transactions. For purposes of this subsection, it shall be presumed unless proved otherwise that transactions are related if they occur within the same 24-month period.

(f) Nothing in this article shall be construed to impose a tax upon any transaction or privilege which, under the constitutions of the United States or the State of Illinois, may not be made the subject of taxation by the County.

Sec. 74-103. Tax additional.

The tax imposed by this article is imposed in addition to all other taxes imposed by the State of Illinois or any other municipal corporation or political subdivision of the State of Illinois.

Sec. 74-104. Payment of the tax.

(a) Except in the case of tax paid pursuant to Section 74-109, the tax imposed by this article shall be paid by the purchase of tax stamps issued by the Recorder or agents of the Recorder.

(b) It shall be the duty of the person or persons liable for the tax to affix, or cause to be affixed, the appropriate number and denomination of tax stamps to the face of the deed, assignment or other instrument of transfer. Any person affixing a tax stamp shall cancel it in accordance with the provisions of Section 74-109 108.

(c) All proceeds resulting from the collection of the tax imposed by this article shall be paid to the County Treasurer on a daily basis.

Sec. 74-105. Real estate transfer declaration.

If a real property transfer declaration is not filed with the Recorder of Deeds as provided by Section 74-106, then the transferee shall be liable for any unpaid tax imposed by this article, together with all applicable penalties.

Sec. 74-106. Exempt deeds.

Subject to the requirement contained in Section 74-107(c), the following transfers are exempt from the tax imposed by this article:

(1) Transfers of real property made prior to May 21, 1979, where the deed was recorded after that date or assignments of beneficial interest in real property dated prior to August 1, 1985, where the assignment was delivered on or after August 1, 1985;

(2) Transfers involving real property acquired by or from any governmental body or acquired by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes or acquired by any international organization not subject to local taxes under applicable law;

(3) Transfers in which the deed, assignment or other instrument of transfer secures debt or other obligations;

(4) Transfers in which the deed, assignment or other instrument of transfer, without additional consideration, confirms, corrects, modifies, or supplements a deed, assignment or other instrument of transfer previously recorded or delivered;

(5) Transfers in which the transfer price is less than \$100.00;

(6) Transfers in which the deed is a tax deed;

(7) Transfers in which the deed, assignment or other instrument of transfer releases property which secures debt or other obligations;

(8) Transfers in which the deed is a deed of partition; provided, however, that if a party receives a share greater than its undivided interest in the real property, then such party shall be liable for tax computed upon any consideration paid for the excess;

(9) Transfers between a subsidiary corporation and its parent or between subsidiary corporations of a common parent either pursuant to a plan of merger or consolidation or pursuant to an agreement providing for

the sale of substantially all of the seller's assets;

(10) Transfers from a subsidiary corporation to its parent for no consideration other than the cancellation or surrender of the subsidiary's stock and transfers from a parent corporation to its subsidiary for no consideration other than the issuance or delivery to the parent of the subsidiary's stock;

(11) Transfers made pursuant to a confirmed plan of reorganization as provided under Section 1146(c) of Chapter 11 of the U.S. Bankruptcy Code of 1978, as amended (11 U.S.C. § 1146(c));

(12) Deeds representing transfers subject to the imposition of a documentary stamp tax imposed by the government of the United States, except that such deeds shall not be exempt from filing the declaration; and

(13) Transfers in which the deed or other instrument of transfer is issued to the mortgagee or secured creditor pursuant to a mortgage or security interest foreclosure proceeding or sale or pursuant to a transfer in lieu of foreclosure.

Sec. 74-107. Filing of real property transfer declaration.

(a) At or before the time that the tax imposed by this article is due or, in the case of an exempt transfer, at or before the time that the deed, assignment or other instrument of transfer is delivered, there shall be filed with the Recorder a real property transfer declaration signed by at least one of the transferors and also signed by at least one of the transferees, or by their respective attorneys or agents. The declaration shall be on a form prescribed by the Recorder, and shall contain such information as the Recorder may reasonably require. Declarations may also be submitted electronically through a transfer tax management software program approved by the Recorder of Deeds, and these shall be considered filed with the Recorder upon the Recorder's receipt of a unique transaction identification number. Electronically submitted declarations shall also be considered signed by the parties when they are clearly identified with a statement of attestation.

(b) If the declaration is signed by an attorney or agent on behalf of transferors or transferees who have the power of direction to deal with the title to the real property under a land trust agreement, the trustee being the mere repository of record legal title with a duty of conveying the real property only when and if directed in writing by the beneficiary or beneficiaries having the power of direction, the attorney or agent executing the declaration on behalf of the transferors or transferees shall not be required to identify the beneficiary or beneficiaries having the power of direction under the land trust agreement.

(c) No transfer shall be exempt from the tax imposed by this article unless the declaration describes the facts supporting the exemption and is accompanied by such supporting documentation as the Recorder may reasonably require.

Sec. 74-108. Obligations of trustees.

No trustee of a trust which holds title to or beneficial interest in real property located in the County shall accept or acknowledge an assignment of a beneficial interest in the trust unless the trustee has received from the assignor and assignee a complete and fully executed real estate transfer declaration as provided in Section 74-107, and unless the amount of tax stamps required by this article has been affixed to the assignment.

Sec. 74-109. Tax stamps.

(a) The Recorder ~~shall~~ may cause to be printed, in such form and quantities and in such denominations as the Recorder may from time to time determine, adhesive stamps for the purpose of paying the tax imposed by this article. Tax stamps may also be sold in a manner where they are affixed as an alternative or electronic indicia.

The Recorder also may appoint one or more agents to sell the tax stamps.

(b)

(1) The Recorder from time to time may provide for the issuance and exclusive use of tax stamps of a new design and forbid the use of stamps of any prior design, but only after giving at least 60 days' notice of the change. The notice shall be published at least three times in one or more daily newspapers of general circulation in the County during the 60-day period before the change takes effect. After the effective date of the change, it shall be unlawful for any person to make use of any other than the new issue or design of stamps to pay the tax imposed by this article.

(2) Any person lawfully in possession of unused tax stamps of a superseded issue or design may, not later than 90 days after the effective date of the change, surrender the stamps to the Recorder together with a sworn application setting forth the name and address of the owner and party surrendering the stamps, how, when and from whom the stamps were acquired and such other information as the Recorder reasonably may require. If the Recorder determines that the application is in proper order, the Recorder promptly shall issue, or authorize an agent to issue, replacement stamps of the new issue or design in exchange for the surrendered stamps.

(c) No person shall sell or expose for sale, traffic in trade, barter or exchange tax stamps issued pursuant to this article without first obtaining the Recorder's written consent. No person shall sell or expose for sale, traffic in, trade, barter or exchange any transfer tax stamp for an amount less than the stamp's face value.

(d) In every case where a physical tax stamp is used to pay the tax imposed by this article, the person affixing the stamp shall write or stamp thereupon the person's name or initials and the date upon which the stamp is affixed, and further shall cut or perforate the stamp in a substantial manner so that the stamp cannot be again used; provided, however, that no stamp shall be defaced in such a manner as to prevent its authenticity and denomination from being determined. In the case of electronically affixed stamps, the Recorder of Deeds shall ensure that electronic stamps or indicia are affixed and used in a manner that prevents multiple use or reuse.

Sec. 74-110. Open transactions.

In the case of a transfer where any part of the transfer price is contingent upon the occurrence of a future event or the attainment of a future level of financial performance, additional tax shall be due at the time each additional amount of consideration is furnished and shall be paid directly to the Recorder. A supplemental real estate transfer declaration shall be filed with the Recorder at the time each tax payment is due.

Sec. 74-111. Penalties.

(a) Any transferor or transferee who fails to file with the Recorder a real property transfer declaration as required by Section 74-107, or a supplemental transfer declaration as required by Section 74-110 or willfully falsifies the value of transferred real estate, shall be subject to a penalty equal to the amount of the applicable tax and shall be fined an amount not to exceed \$1,000.00 or imprisoned for a period not to exceed six months, or both.

(b) No transfer of a beneficial interest in any land trust shall be operative until such time as there is compliance with this article imposing this tax.

Sec. 74-112. Maintaining books and records.

Every transferor and transferee shall retain for at least seven years all books and records relating to any transfer

of title to, or beneficial interest in, real property located in the County, including the contract of sale, the closing statement and all other original source documents. Every trustee shall retain for at least seven years every real estate transfer declaration it receives pursuant to Section 74-108. All materials described in this section shall be kept in the English language and, at all times during business hours of the day, shall be open to inspection by the Recorder.

Sec. 74-113. Rules and regulations.

The Recorder is authorized to adopt, promulgate and enforce rules and regulations pertaining to the administration and enforcement of this article.

Secs. 74-114-74-149. Reserved.

Effective date: This ordinance shall be in effect immediately upon adoption.