



# FIDELITY NATIONAL TITLE UPDATES

– LEGISLATIVE UPDATE –

AUGUST 2003

"Appreciate the Fidelity Difference"

SPECIAL EDITION

## 25¢ MORTGAGE TAX IN ROCKLAND CO. EXPECTED OCT. 1, 2003

On July 30, 2003, Governor Pataki signed Senate Bill number 3574 (Assembly 7225), an enabling act that adds a new § 253-f to Article 11 of the NY Tax Law. *The act authorizes Rockland County to enact a local law imposing an additional mortgage tax of \$.25 (.25%) on each \$100 or remaining fraction of principal debt or obligation secured by a mortgage on real property.* This tax is in addition to the existing mortgage tax and effectively raises the total tax on mortgages recorded in Rockland County to 1.25%. The MTA deduction of 1/4 of 1% on the first \$10,000 (up to \$25) and the obligation of lenders to pay 1/4 of 1% of the mortgage tax, where applicable, does not apply to the Rockland County Tax.

### TAX CALCULATION EXAMPLES:

Mortgage Amount	..... \$	1,000,000.00	\$	265,000.00
Tax Rate – \$.25 per \$100 (.25%)	..... x	0.0025		0.0025
Amount of Additional Tax payable	..... \$	2,500.00	\$	662.50

The state enabling act provides that it “shall take effect thirty days after it becomes a law[.]” which would be on or about the 30<sup>th</sup> of August. It is not until the enabling act becomes law that the County can adopt its local law. In order for the County to impose the tax authorized under Article 11, the County will have to follow the procedure outlined in the Municipal Home Rule Law, § 20. This section has built in time periods that would prevent the local law from being adopted until after September 1. Accordingly, the earliest possible date that the local law could become effective would be *October 1, 2003*.

The enabling act limits the duration of the County’s local law to three years, whereupon the county legislature must enact a new local law if it elects to continue to impose the tax. There is no limit on the number of subsequent enactments which may be adopted by the county, except that the original enactment or any subsequent local law enactments *may only be effective on the first day of a month*.

In respect to mortgages on properties located both in Rockland and other counties, the enabling act imposes upon the recording officer in the county where the mortgage is *first recorded* the obligation to collect the tax imposed under § 253-f.

The law imposes the new tax on the recording of the mortgage, *irrespective of the date of execution or closing*. The County

Clerk’s office has advised us that so long as the recording date of an instrument is prior to the effective date of the local law no additional tax will be due. Thus, a mortgage that is submitted for recording prior to the effective date of the local law, and not thereafter rejected for recording, will not be subject to additional mortgage tax. However, if a mortgage is rejected and resubmitted after the effective date of the local law, the additional tax under § 253-f will be charged, no exceptions.

The rules for administering this tax are those that are applicable to mortgage tax and set forth generally under Article 11, except to the extent that any provision either is inconsistent with a provision of § 253-f or, is not relevant to the tax authorized by that section.

*(For a complete copy of Senate Bill number 3574, see over.)*

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## State of New York

SENATE 3574

ASSEMBLY 7225

**AN ACT** to amend the tax law, in relation to authorizing the county of Rockland to impose a county recording tax on obligation secured by a mortgage on real property

**THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**

Section 1. The tax law is amended by adding a new section 253-f to read as follows:

Section 253-f. Recording tax imposed by the county of Rockland. 1. Rockland county, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws imposing in such county a tax of twenty-five cents for each one hundred dollars and each remaining major fraction thereof of principal debt or obligation which is or under any contingency may be secured at the date of execution thereof, or at any time thereafter, by a mortgage on real property situated within such county and recorded on or after the date upon which such tax takes effect and a tax of twenty-five cents on such mortgage if the principal debt or obligation which is or by any contingency may be secured by such mortgage is less than one hundred dollars.

2. The taxes imposed under the authority of this section shall be administered and collected in the same manner as the taxes imposed under subdivision one of section two hundred fifty-three and paragraph (b) of subdivision one of section two hundred fifty-five of this article. Except as otherwise provided in this section, all the provisions of this article relating to or applicable to the administration and collection of the taxes imposed by such subdivisions shall apply to the taxes imposed under the authority of this section with such modifications as may be necessary to adapt such language to the tax so authorized. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax authorized by this section. For purposes of this section, any reference in this article to the tax or taxes imposed by this article shall be deemed to refer to a tax imposed pursuant to this section, and any reference to the phrase "within this state" shall be read as "within Rockland county", unless a different meaning is clearly required.

3. Where the real property covered by the mortgage subject to the tax imposed pursuant to the authority of this section is situated in this state but within and without the county imposing such tax, the amount of such tax due and payable to such county shall be determined in a manner similar to that prescribed in the first paragraph of section two hundred sixty of this article which concerns real property situated in two or more counties. Where such property is situated both within such county and without

the state, the amount due and payable to such county shall be determined in the manner prescribed in the second paragraph of such section two hundred sixty which concerns property situated within and without the state. Where real property is situated within and without the county imposing such tax, the recording officer of the jurisdiction in which the mortgage is first recorded shall be required to collect the taxes imposed pursuant to this section.

4. A tax imposed pursuant to the authority of this section shall be in addition to the taxes imposed by section two hundred fifty-three of this article.

5. Notwithstanding any provision of this article to the contrary, the balance of all moneys paid to the recording officer of the county of Rockland during each month upon account of the tax imposed pursuant to the authority of this section, after deducting the necessary expenses of his office as provided in section two hundred sixty-two of this article, except taxes paid upon mortgages which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by such officer on or before the tenth day of each succeeding month to the commissioner of finance of Rockland county and, after the deduction by such commissioner of finance of the necessary expenses of his or her office provided in section two hundred sixty-two of this article shall be deposited in the general fund of the county of Rockland for expenditure on any county purpose. Notwithstanding the provisions of the preceding sentence, the tax so imposed and paid upon mortgages covering real property situated in two or more counties, which under the provisions of this section or section two hundred sixty of this article are first to be apportioned by the commissioner, shall be paid over by the recording officer receiving the same as provided by the determination of said commissioner.

6. Each enactment of a local law may provide for the imposition of a mortgage tax for a period of time no longer than three years from the date of its enactment. Nothing in this section shall prohibit the adoption and enactment of local laws, pursuant to the provisions of this section, upon the expiration of any other local law adopted pursuant to this section.

7. Any local law imposing a tax pursuant to the authority of this section or repealing or suspending such a tax shall take effect only on the first day of a calendar month. Such a local law shall not be effective unless a certified copy thereof is mailed by registered or certified mail to the commissioner at the commissioner's office in Albany at least thirty days prior to the date the local law shall take effect.

8. Certified copies of any local law described in this section shall also be filed with the county clerk of the county of Rockland, the secretary of state and the state comptroller within five days after the date it is duly enacted.

Section 2. This act shall take effect on the thirtieth day after it shall have become a law.