



# FIDELITY NATIONAL TITLE UPDATES

AUGUST 2007

"Appreciate the Fidelity Difference"

SPECIAL EDITION

## COMMUNITY PRESERVATION

### FUNDED BY REALTY TRANSFER TAXES

#### Hudson Valley Towns of Red Hook & Warwick Impose New Tax

This year has seen the enactment to two new local transfer tax statutes for the purpose of generating revenue for Community Preservation programs. Below is a brief discussion of each of these taxes

##### I. TOWN OF RED HOOK, DUTCHESS COUNTY

Effective August 1, 2007, pursuant to NY Tax Law Article 31-A-1, § 1438 et seq. (Local Law 1 of 2007, § 57-1 et seq. of the Town Code), the Town of Red Hook will be imposing a transfer tax on the consideration on conveyances of interests in real property located in the Town, including conveyances of property located in the Villages of Tivoli and Red Hook, occurring on or after August 1, 2007. The tax will support the Town's Community Preservation Fund.

The tax is scheduled to expire on December 31, 2026.

Subject to the exemptions and deductions discussed below, ***the tax is at the rate of two percent (2.0%) on the consideration paid for each conveyance of real property*** or interest therein including transfers of condominium units and cooperative apartments, as well as grants of leasehold estates and controlling interests.

Conveyances made pursuant to a binding<sup>1</sup> written contract entered into prior to August 1, 2007, are exempt from the tax provided that the date of execution of the contract is confirmed by independent evidence, i.e., such as the prior recording of the contract, the actual payment of the down payment deposit, or other facts and circumstances acceptable to the County Treasurer.

The tax is to be paid by the grantee, however, if the

grantee fails to pay the tax or is exempt, the tax is to be paid by the grantor, in which case the liability of the grantor and grantee is joint and several.

Generally, the tax follows the rules governing the NYS transfer tax under Article 31, however, the following conveyances are also exempt from the tax.

...

*(10) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:*

*(a) An agricultural, conservation, scenic, or open space easement.*

*(b) Covenants or restrictions which prohibit the development where the property or portion of property being conveyed has had its development rights permanently removed.*

*(c) A purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed.*

*(d) A transfer of development rights agreement, where the property being conveyed has had its development rights removed.*

*(e) Real property subject to any locally adopted land preservation agreement.*

*(11) Conveyances of real property, where the property is viable agricultural land as defined in subdivision (7) of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions set forth in the preceding subparagraph (b) of paragraph (10), provided that said development restriction precludes the conversion of the property to a non-agricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement,*

<sup>1</sup> The local law § 57-9 uses the word "building" instead of "binding". This appears to be an error as the State enabling law, Tax Law Article 31-A-1, § 1438-b, refers to a "binding contract."

*agreement, or other suitable instrument which is conveyed to the Town simultaneously with the conveyance of the real property.*

*(12) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental, or historic preservation purposes.*

The grantee in **both residential and commercial transactions** is allowed an exemption against the consideration equal to the median sales price of residential real property in Dutchess County as determined annually by the NYS Office of Real Property Services. For transactions closing in 2007 the exemption is \$330,000 (based on 2006 sales data) and this amount should be inserted on Schedule B, line 2. The annual amount of the exemption for subsequent years can be found on the ORPS website at <http://www.orps.state.ny.us/sales/resmedian.cfm>.

The tax shall be paid to the recording officer as the agent of the treasurer upon the recording of a deed or other instrument. If the tax is on the transfer of a cooperative apartment or on an unrecorded transfer, the tax is paid and the return is filed with the Dutchess County Treasurer.

A copy of the local law, and the form of tax return can be found on the Fidelity National Title website at <http://www.fidelitytitleny.com/RedHookCPALocalLaw1of2007final.pdf> and at <http://www.fidelitytitleny.com/files/RedHook.pdf>.

## II TOWN OF WARWICK, ORANGE COUNTY

On April 1, 2007, pursuant to NY Tax Law Article 31-F, § 1449 et seq. (Local Law 06-2006, Article II, §§ 7-10 et seq. of the Town Code), the Town of Warwick imposed a transfer tax on all conveyances in the Town occurring on or after April 1, 2007 where the consideration exceeds \$500. The tax will support the Town's Community Preservation Fund.

The tax is scheduled to expire on December 31, 2025.

The tax is at the rate of three-quarters of one percent (0.75%) on the consideration paid for each conveyance of real property or interest therein including condominium and cooperative apartments and grants of

leasehold estates and controlling interests.

Conveyances made pursuant to a binding<sup>2</sup> written contract entered into prior to April 1, 2007, are exempt from the tax provided that the date of execution of the contract is confirmed by independent evidence, i.e., such as the prior recording of the contract, the actual payment of the down payment deposit, or other facts and circumstances acceptable to the County Treasurer.

The tax is paid by the grantee, however, if the grantee fails to pay the tax or is exempt, the tax is to be paid by the grantor in which case the liability of the grantor and grantee is joint and several.

Generally the tax follows the rules governing the NYS transfer tax, however, the following conveyances are also exempt from the tax.

...

*(10) Conveyances of real property, where the entire parcel of real property to be conveyed is the subject of one or more of the following development restrictions:*

*(a) An agricultural, conservation, scenic, or other open space easement which entirely prohibits the development of the property or which restricts its use solely to agriculture.*

*(b) Recorded covenants or restrictions which prohibit the development of the property.*

*(c) A purchase of development rights agreement.*

*(d) A transfer of development rights agreement, where the property being conveyed has had its development rights removed.*

*(e) Development restrictions which result from the inclusion of the property in an agricultural district or its subjection to an individual commitment, pursuant to Article 25-aa of the New York Agriculture and Markets Law.*

*(f) Development restrictions which result*

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<sup>2</sup> The local law § 6-2006 uses the word "building" instead of "binding". This appears to be an error as the State enabling law, Tax Law Article 31-F, § 141449-bbbb refers to "binding contracts."

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*from the subjection of the property to a local land preservation agreement, such that the development of the property is entirely prohibited or is restricted solely to agriculture, pursuant to Chapter 54 of the Town Code or corresponding provisions of a local law adopted by an incorporated village.*

11. *Conveyances of real property, where the property is viable agricultural land as defined in Subdivision (7) of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions set forth in the preceding Subsection B(10), provided that said development restrictions are evidenced by an easement, agreement, or other suitable instrument which is conveyed to the Town simultaneously with the conveyance of the real property.*

12. *Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental, or historic preservation purposes.*

The grantee is allowed an exemption against the taxable consideration pursuant to Local Law "§ 7-25. Additional exemptions", as follows:

A. *There shall be allowed an exemption of \$100,000 on the consideration of the conveyance of improved real property or an interest therein.*

B. *There shall be allowed an exemption of \$50,000 on the consideration of the conveyance of unimproved real property or an interest therein.*

The tax shall be paid to the treasurer or the recording officer as the agent of the treasurer upon the recording of a deed or other instrument. If the tax is on the transfer of a cooperative apartment or on an unrecorded transfer, the tax is paid and the return is filed with the Orange County Treasurer.

A copy of the local law, and the form of tax return can be found on the Fidelity National Title website at <http://www.fidelitytitleny.com/warwick.pdf> and at <http://www.fidelitytitleny.com/files/Warwick.pdf>.

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