

AN ORDINANCE ESTABLISHING A TRANSFER TAX ON REAL ESTATE TRANSACTIONS INVOLVING PROPERTY WITHIN THE CORPORATE LIMITS OF THE TOWN OF GREENWOOD AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

WHEREAS, House Bill 757, authorizing municipalities to impose a realty transfer tax of 1 ½%, was enacted by the General Assembly and signed by the Governor on July 1, 1998, as 71 Delaware Laws, Chapter 349; and

WHEREAS, this law authorizes municipalities to impose a realty transfer tax by ordinance to a maximum of 1 ½%; and

WHEREAS, any municipal ordinance in implementing such transfer tax must comply with the provisions of 30 Delaware Code, Sections 5401 and 5403 so that additional standards and definitions must be considered; and

WHEREAS, the use of any funds realized by a municipality pursuant to the authorization contained in House Bill 757 shall be segregated from the municipality's general fund and the funds, and all interest thereon, shall be expended solely for the capital and operating costs of public safety services, economic development programs, public works services, capital projects and improvements, infrastructure projects and improvements, and debt reduction; and

WHEREAS, the Town Council of the Town of Greenwood has deemed it important and in the best interest of the Town to establish a realty transfer tax that will not increase the overall transfer taxes now paid by property purchasers.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Greenwood, in Council met, in the manner following, to-wit:

Section 1. Imposition.

There is hereby imposed upon the transfer of all real property located within the town limits, as they now or hereafter exist, a tax of one and one-half percent (1 ½%) of the value of the property conveyed in conformance with the definitions and exceptions governing the state realty transfer tax as contained within 30 Del. C. Section 5401 *et seq.*, and all amendments heretofore or hereafter adopted. However, in addition, there shall be no tax imposed on those transfers where all grantees qualify as a first-time home buyer. A "first-time home buyer", for purposes of this section, shall mean a natural person who, individually, or as a tenant by the entireties, joint tenant or co-tenant, has at no time held any interest in residential real estate wherever located and

which has been occupied as their principal residence, and who intends to occupy the property being conveyed as his or her principal residence within ninety (90) days following recordation.

Section 2. Allocation of taxes; duty to pay.

Any tax imposed by this ordinance shall be apportioned equally between the grantor and the grantee; provided, however, that the parties to any transaction which is subject to the realty transfer tax imposed by this article may, as between themselves, agree to allocate the tax otherwise; but in all events, it shall be the ultimate responsibility of the grantee to see that the appropriate amount of tax is paid no later than the presentation of the document involved in such a transaction for recording at the appropriate recorder of deeds office. Upon receipt of the appropriate amount, the Town office or its duly authorized agent shall, upon the document relating to such transaction, confirm that the tax imposed by this ordinance has been paid. The Town may appoint the Sussex County Recorder of Deeds, any bank or trust company, or any attorney-at-law as its duly authorized agent to collect a realty transfer tax imposed by this ordinance and to confirm such payment on the face of the document presented for recording.

Section 3. Effect of failure to pay; interest; penalties; liens.

Where any real property within the Town is transferred without payment of the appropriate real estate transfer tax in violation of this ordinance:

1. The amount due shall bear interest at the legal rate established by Delaware law, commencing with the date that such document is duly recorded in the Sussex County Recorder of Deeds Office, and the transferee in such transaction shall be personally liable for the full amount of such tax, plus all accrued interest to date of payment.
2. The amount of such tax, together with the accrued interest thereon, shall constitute a charge or assessment against the property so transferred and shall be a lien against the property so transferred in accordance with the procedures set forth in the Charter of the Town and/or in accordance with the procedures set forth in the general statutes of the state regarding municipal liens. If suit should be brought by the Town to collect such delinquent tax, then the Town shall be entitled, in addition to the principal amount owed plus accrued interest, to be reimbursed for its reasonable attorneys' fees and court costs
3. Where any document involved in a transaction subject to the tax imposed by this ordinance is recorded without payment thereof, such recording shall

constitute a violation and the grantee shall, upon conviction before any court of competent jurisdiction, pay a fine of five hundred dollars (\$500.00), plus any applicable court costs and assessments.

Section 4. Construction, operation and interpretation.

This ordinance shall be applied, construed and interpreted in the same manner as is the state realty transfer tax as set forth in 30 Del. C. §5401, *et seq.* as it may have heretofore been or is hereafter amended, it being the intent of this ordinance that it apply whenever the state's realty transfer tax applies, except in regard to the additional first-time home buyer's exemption allowed by the Town; provided, however, that:

1. In applying the provisions of the state's realty transfer tax statute through this ordinance, "The Town of Greenwood" shall be substituted (where appropriate) for the "State of Delaware", "Department of Finance", "Division of Revenue" or the like.
2. The provisions of 30 Del. C. Sections 5405 ("Documentary Stamps; Affixing; Cancellation; Other Methods"), 5406 ("Furnishing Stamps; Sales; Agents; Compensation; Bond Premiums"), 5407 ("Enforcement: Rules and Regulations:), 5408 ("Failure to Affix Stamps"), 5412 ("Grantor to Pay Tax"), 5414 ("Grantor to Pay Tax Receipts") or any future corresponding provisions of law shall not be held applicable to the operation and application of this ordinance.
3. The unlawful acts set out at 30 Del. C. Section 5410 now and as it may hereafter be amended shall, to the extent applicable to the Town ordinances and not otherwise superseded hereby, likewise be unlawful acts under this ordinance, conviction for which shall result in a fine of five hundred dollars (\$500.00).
4. Where any provision of 30 Del. C. Section 5401 *et seq.* is inconsistent with this ordinance, the provisions of this ordinance shall control; and wherever any provision of 30 Del. C. Section 5401 *et. seq.* is not applicable or appropriate, it shall be disregarded or construed so as to best achieve the purpose of this ordinance, which is that whenever a realty transfer tax becomes due to the state under 30 Del. C. Section 5401 *et. seq.*, except as to a first-time home buyer, as defined above, a realty transfer tax of one and one-half percent (1 ½%) shall likewise become due to the Town.

Section 5. Exemptions.

Notwithstanding the effective date of ordinance, the transfer of any real property within the Town pursuant to a bona fide written contract entered into prior to the effective date of this ordinance (SEPTEMBER 2, 1998) shall be exempt from the provisions of this ordinance.

Section 6. Effective Date.

This ordinance shall take effect at 12:01 a.m. on SEPTEMBER 2, 1998.

Synopsis

The purpose of this ordinance is to establish a one and one-half percent (1 ½%) real estate transfer tax for The Town of Greenwood to be collected at the time of transfer of any real property within the corporate limits. Revenues collected from this tax will be segregated in a separate account or fund for use only in accordance with the restrictions contained in 71 Delaware Laws, Chapter 349. (Transfers by will, spousal conveyances, conveyances from parent to child, conveyances to non-profits and other specified conveyances would not be subject to the tax.)

APPROVED this 1st day of SEPTEMBER, 1998.

Randy L. Willey

, Mayor

ATTEST: Donald Brown (SEAL)

, Secretary of Council