

## **8. PREPARATION FOR CLOSING; CLOSING; POST-CLOSING MATTERS**

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NEW YORK STATE BAR ASSOCIATION

REAL PROPERTY SECTION

PRACTICAL SKILLS: PURCHASES AND SALES OF HOMES

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THE HOUSE CLOSING

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## THE HOUSE CLOSING

### **I. SELLER: PREPARING FOR CLOSING**

The seller's attorney has the following basic functions to perform prior to the closing:

- A. Arrange for pay-off of loans. The seller should advise its bank of the projected closing date and request a pay-off letter. The seller's attorney should confirm the numbers with the seller and send the payoff letter to both the purchaser's attorney and the title company for review. The title company will advise the seller's attorney of the amount it will want to collect at closing to satisfy the loan. That amount will be a little more than the outstanding principal amount of the mortgage and accrued interest because the title company will want to collect a few extra days' interest to cover the lapse in time between the closing date and the date the pay-off check is delivered to the bank. Although the title company normally sends the check by overnight courier, there can be delays, and the title company will therefore collect sufficient money to give itself a little leeway. Be aware that if the house is encumbered by a HELOC (home equity line of credit), the title company will require the seller to terminate the HELOC before the closing and obtain a letter from the bank confirming that it has closed the line of credit, all of which takes time. For a house closing and condo closing, the title company will collect the funds needed to pay off the mortgage at closing, deliver the funds to the bank immediately after the closing, and obtain and record a satisfaction from the bank after the pay-off. A cooperative closing is handled differently, in that the seller's bank will send its attorneys to the closing to collect the payoff funds and deliver the original stock certificate and proprietary lease.
  
- B. Review of Title. The seller's attorney reviews the buyer's title report and arranges for removal of any exceptions to title that must be removed pursuant to the terms of the contract of sale. The objections are listed on Schedule B of the title report. The most common objection to title is a mortgage that has to be satisfied (see above). Other common objections include judgments, tax liens, easements, restrictive covenants, sidewalk violations, and potential water charges. Occasionally more esoteric exceptions are listed, such as a problem in chain of title. To determine how to eliminate title objections, the seller's attorney need only talk to the title

company's clearance attorney. Some matters can be dealt with by affidavit (e.g., confirmation that New York City has not performed any work that could be the basis for an emergency repair lien; and confirmation that seller has not been known by any other name for the past 10 years). Other matters must be removed prior to closing. For example, if there are any judgments against the seller, the title company will normally require seller to pay the judgment and obtain a satisfaction prior to the Closing.

- C. Schedule the Closing. When the purchaser and seller are both ready to close, the closing must be scheduled, which is an art in and of itself considering the number of parties involved. For a house, the seller, buyer, title company, and attorney for the buyer's bank must attend the closing, which is usually held (unless the contract otherwise provides) at the office of the lender's attorney. If the buyer is not borrowing money, a house closing is usually held at the office of the seller's attorney. The same rule applies to condos; but coop closings are usually held at the office of the coop's managing agent. Although it is the buyer's job to schedule the title company, it's not a bad idea for the seller's attorney to confirm the closing date with the title company once a date has been confirmed with the purchaser.
- D. Prepare/Obtain the Closing Documentation. The seller must prepare or obtain, among other things, (a) the closing documents required by the contract of sale, (b) transfer tax documentation, (c) the documentation required by the title company to clear title, (d) a closing statement or memorandum, and (e) power(s) of attorney if the seller(s) will not attend the closing.
- a. Contract of Sale Documents. The contract of sale provides a blueprint for the closing documents. For a house, that documentation will include:
- i. Bargain and Sale Deed (with covenants). A deed must be delivered at a house or a condo closing (although the language of a condo deed differs from the language of a house deed), but is not delivered at a coop closing.
  - ii. If the seller is a foreign national who does not reside in the United States, the buyer must pay over to the Internal Revenue Service 10% of the purchase price at the Closing, subject to certain exceptions. Assuming the seller is not a non-resident foreign national, the seller is required to deliver to the purchaser a

Certificate of Non-Foreign Status (not required by law for transactions where the purchase price does not exceed \$300,000, although the exemption is conditioned on continuing residency by the purchaser, but the certificate is required by contract).

- iii. Fuel statement. The seller should have its fuel oil company measure the fuel in the house's oil tank a day or two before the closing and provide the seller with a statement showing the amount of oil in the tank and its price.
- iv. Water meter reading. If the water consumption is measured by a water meter, DEP must be contacted several weeks before the closing to obtain a "final" water meter reading.

b. Title Company Documentation

- i. Seller's "Common Exceptions" Title Affidavit.
- ii. If water charges are listed in the title report as a possible title objection, Seller must provide a recent meter reading. This may involve calling the Dept. of Environmental Protection to obtain a "final" water meter reading. Such a reading should generally be ordered at least 2 weeks before the closing to give the Department time enough to read the meter and furnish a reading. Water meter readings are not required for condos or coops. If the title company is willing to pay the water bill, the funds for the meter reading can be delivered to the title company at closing.
- iii. Obtain other documentation required by the title company to clear title, including loan payoff letter and, if there's a HELOC in place, confirmation from the bank that the HELOC has been closed.
- iv. Obtain an invoice from the title company listing the amounts seller will have to pay at closing to the title company, including transfer taxes, any charges to record a power of attorney, and any charges billed by the title company for its services in satisfying the seller's mortgage.

- c. Transfer Tax Documents and Related Government Filings. For all transfers in New York State, a TP-584 (New York State Real Estate Transfer Tax Affidavit/Credit Line Mortgage Certificate) and RP-5217 (Transfer Report/Equalization Form) must be prepared (the forms can

be obtained through the website of the New York State Department of Taxation and Finance). Additional transfer tax documentation may be required in some local jurisdictions. For example, a New York City closing requires preparation of a TP-584 (New York State Real Estate Transfer Tax Affidavit/Credit Line Mortgage Certificate), NYC RPTT (New York City Real Property Transfer Tax Report), RP-5217 (Transfer Report/Equalization Certificate), smoke alarm affidavit, and Housing Preservation and Development Affidavit certifying that the house/condo/coop is not a multiple dwelling. To confirm the government filings to be made in any jurisdiction, check with the title company.

- d. Income Tax Documentation. If seller is an individual, partnership, estate or trust and is not a resident of New York, seller must complete a form IT-2663, which is an estimate of the seller's income tax liability to New York State with respect to the sale. Generally, the seller's accountant or the seller should prepare the form. If estimated income tax will be payable to New York State, a check for that amount will have to be delivered to the title company at closing along with the form IT-2663. Pre-clear with the title company the IT-2663 and the tax amount.
- e. Powers of Attorney. If the seller will not attend the closing, the seller's attorney will need to prepare a power of attorney, using the statutory form. Before having the power signed, a copy of the draft power should be delivered to both the title company and the purchaser for review. Once the form is approved, the seller's attorney should have it signed and acknowledged, and then send the signed, acknowledged form to the title company and purchaser for further review. The seller's attorney will need to confirm that the seller is alive at the closing and sign an affidavit that the power of attorney is in full force and effect. Accordingly, the seller should be advised to make himself or herself available by telephone at the Closing.
- f. Closing Statement/Memorandum. The attorney should prepare a closing statement or memorandum for the seller's review that, at a minimum, sets out all the financial elements of the transaction, including: (a) the seller credits, the buyer's credits, the adjustments, and the net balance of the purchase price payable at closing, (b) the disbursement of the down payment, (c) the disbursement of the balance of the purchase price, and (d) a list of closing expenses not already

reflected in the disbursement of the down payment and balance of the purchase price. A sample form of closing statement is set out below, which assumes the sale of a New York City house on August 5, 2012:

	<u>Due Seller</u>	<u>Credit to Purchaser</u>
Purchase Price:	\$1,100,000.00	
Downpayment		\$110,000.00
Real Estate Taxes: \$	18,080.70*	
Fuel Cost	\$ 100.00	
PCDA Credit		\$ 500.00
Subtotal:	<u>\$1,118,180.70</u>	<u>\$110,500.00</u>
Balance Due Of Purchase Price		<u>\$1,007,680.70</u>
Disbursement of Downpayment (\$110,000 plus \$82.31 interest):		
\$66,000.00	to ABC Broker for brokerage commission	
\$15,675.00	to Chicago Title Insurance Company in payment of New York City Real Property Transfer Tax (\$15,675), New York State Real Estate Transfer Tax (\$4,400), mortgage satisfaction fee (\$200), and recording charges for power of attorney (\$120)	
\$2,024.30	to MupsyBupsy P.C. (Seller's law firm)	
\$26,383.01	to John Smith (Seller)	
Payment of Balance of Purchase Price:		
\$808,450.23	to Citibank N.A., in payment of 1 <sup>st</sup> mortgage	
\$199,230.47	to John Smith (Seller)	

\*\$20,000 (7/1/2012-6/30/2012)/365 days x 330 days (8/4/12-6/30/13) = \$18,080.70

E. Review Numbers with Seller and with Purchaser's Attorney. Once the closing statement is prepared, it should be reviewed with the seller. Once numbers are confirmed with the seller, the



computation of the balance of the purchase price, including apportionments, should be sent to the buyer's attorney for review. Note that it is not uncommon for apportionments to differ slightly because of rounding differences and just plain bad math. It is rarely economic to spend any time resolving apportionment differences.

- F. Reminders to Seller. Remind the Seller (preferably in writing) of the following:
- a. The required condition of the property (usually vacant and broom clean)
  - b. Bring keys, garage opener, security codes to the Closing
  - c. Bring photo identification to the Closing
  - d. Cancel insurance after the Closing
  - e. Cancel utilities after the Closing

## II. PURCHASER: PREPARING FOR CLOSING

- A. The Purchaser's pre-closing tasks include:
- a. Clearing the Loan. The bank's issuance of a loan commitment to the buyer is only the first step in getting to the closing. The bank will not close until all the conditions of the commitment have been met and the bank's underwriters have signed off. Once the underwriters have signed off, closing can occur. The buyer's attorney needs to establish contact with the bank's attorney and monitor the status of underwriting clearance.
  - b. Review Title Search/Clear Title Objections against Buyer. Buyer's attorney should ask the title company to send copies of the title report to the seller's attorney and the attorneys for the buyer's lender. Once received, the buyer's attorney should review the title report and advise seller in writing of any objections to title. The report should also be reviewed for title objections relating to the buyer (in connection with the loan). For example, judgments against the buyer will have to be satisfied before the closing and proof of satisfaction furnished to the title company.
  - c. Prepare Closing Statement/Closing Memorandum. The buyer's attorney should prepare a closing statement or memorandum for the buyer's review that, at a minimum, sets out all the financial elements of the transaction, including: (a) the seller credits, the buyer's credits, the apportionments for taxes, water, fuel and any other charges, and the net balance of the purchase price payable at closing, (b) the disbursement of the balance of the purchase price, and (c) a list of closing expenses. Typical closing expenses include:

- i. Mansion Tax (1% of purchase price if purchase price is \$1,000,000 or more) (usually paid to title company).
- ii. Title company charges for (a) premium for owner's title policy and lender's title policy, (b) Mansion Tax (if applicable), (c) mortgage tax, (d) survey charges, and (e) additional title charges, including survey charges and recording charges.
- iii. Closing attendance fee/gratuity to title closer
- iv. Some local jurisdictions impose a transfer tax on buyers (e.g., the Peconic Bay region).

Review the closing statement with the purchaser and, once confirmed, review with the seller the calculation of the balance of the purchase price and apportionments.

d. Determine Net Loan Proceeds and Money Purchaser Will Need to Close.

- i. The lending bank normally pays a portion of the balance of the purchase price and the remaining balance is paid by the purchaser. Once the balance of the purchase price is computed, the buyer's attorney needs to know the net loan proceeds, in order to compute the amount the buyer must bring to the closing. For example, if the buyer is borrowing \$800,000, the bank will not fund \$800,000 at the closing. It will deduct from the loan amount certain charges, including prepaid interest, prepaid tax escrow, attorneys fees owed the bank's attorney (sometimes paid separately by the buyer at closing and sometimes deducted from the loan proceeds), and fees owing the bank. The loan amount less those charges is the "net loan proceeds." If the net loan proceeds are \$789,200 and the balance of the purchase price is \$1,007,580.70, then the buyer will need an official bank check in the amount of \$218,380.70 to pay the balance of the purchase price at closing, computed as follows:

\$1,007,580.70	balance of purchase price
\$ 789,200.00	net loan proceeds
\$ 218,380.70	official bank check needed from Purchaser

Unfortunately, the lending bank will often delay in providing the information as to the net loan proceeds until the day before the closing. Accordingly, "guesstimates" must be made in preparing the draft closing statement, and the numbers put in final form only after the bank's numbers are received.

- ii. The lending bank's attorneys must be advised of the requirement for an official bank check, since they may intend to bring an attorney escrow account check. In Manhattan, official bank checks are typically required. In some other areas,

- attorney escrow checks are accepted.
    - iii. Obtain from the Seller instructions on how the balance of the purchase price is to be disbursed and provide lending bank and purchaser with appropriate instructions.
  - e. Closing Documents. For a house sale, closing documents are generally prepared by the seller's attorney. However, it is generally a good idea for the buyer's attorney to bring to the closing:
    - i. A Certificate of Non-Foreign Status (in case the seller's attorney forgets).
    - ii. If there is no lender, a form 1099 information sheet to be completed by the seller, so the purchaser's attorney can file a 1099.
  - f. Reminders to Purchaser. The Purchaser should be advised of the following:
    - i. ALL checks for the balance of the purchase price must be official bank checks, including the lending bank's checks.
    - ii. Inspect the house (preferably the day of the closing) to determine if there has been any damage since the contract signing.
    - iii. Arrange for utilities.
    - iv. Arrange for insurance.
    - v. Advise purchaser to file for a STAR tax exemption (if applicable).
    - vi. If purchaser will not attend closing and the purchaser's attorney is acting under a power of attorney, advise the purchaser to be available by telephone at the closing.
  - g. Schedule the Closing. DO NOT forget to schedule the title company, as well as the seller, purchaser, and lender's attorneys.

### III. CLOSING

#### a. NEVER FORGET

**BUYER:** Get the deed and title policy

**SELLER:** Collect the entire balance of the purchase price. Be sure checks are made out to the proper parties, currently dated, drawn on a local bank, and are either certified, cashiers, or official bank checks. Except in rare cases, PERSONAL CHECKS ARE NOT ACCEPTABLE; NOR ARE CHECKS DRAWN ON THE BUYER'S OR THE BUYER'S LENDER'S ATTORNEY ESCROW ACCOUNT (UNLESS THE CHECK IS CERTIFIED, CASHIERS, OR OFFICIAL BANK CHECK).

b. Typical Problems:

- i. Purchaser pays Seller cash at Closing for personal property, having failed to advise his/her attorney. A sales tax return must be filed, and sales tax must be paid. The buyer's and seller's attorneys can't ignore the sales tax obligation.
- ii. Damage to the apartment. It's not unusual for the buyer to note some damage at the pre-closing inspection. The form contract, unless it has been modified, provides that the buyer accepts the property in its "as is" condition as of the date the contract is signed. The question becomes then whether the damage was present at contract signing, or occurred after the contract signing; and the cost of repairs. It's generally a negotiation.
- iii. Bank's attorney comes to closing with a check that's not an official bank check. The risks of closing with what is essentially a personal check should be explained to the seller and the seller should make the decision (preferably with an acknowledgement in writing that it's against the attorneys' advice). The contract requires official bank checks, the safest money instrument is an official bank check, and an official bank check will generally clear immediately, whereas a personal check takes time (maybe a week) to clear – seems like a no brainer.

#### IV. POST-CLOSING

1. The title company will record all documents that have to be recorded and pay the transfer taxes.
2. If the seller's payoff bank was holding a tax escrow, the escrow is typically returned to seller after the closing.
3. A 1099 must be filed by January 31 of the calendar year following the calendar year in which the closing was held. If there was no bank representative at the closing, this duty normally falls to the buyer's attorney.

## PRE-CLOSING AND CLOSING

### I. PRE-CLOSING

#### A) DUE DILIGENCE (OTHER THAN TITLE EXAMINATION)

1) Buyer's attorney and Seller's attorney each reviews contract and completes file and sets up closing checklist.

2) Seller's attorney obtains title documents (redated abstract of title and survey map, proposed deed and any other title documents in his possession) and sends to Buyer's attorney.

Note: Seller's attorney should note that the contract date for provision of title documents may predate the date for satisfaction of contingencies and therefore may need to obtain title documents before the contract contingencies have been satisfied. If only part of the parcel is being conveyed, a duplicate search should be obtained. Seller's attorney should confirm with abstract company and surveyor that the charges will be canceled if the order is canceled for failure of contingencies and the work product returned.

3) Seller's attorney orders mortgage payoff statements and discharges or releases of other liens and gathers information regarding all liens. Lender's or other lienor's policies and requirements for ordering payoff statements (e.g. closeout of credit lines) should be determined and followed. (For privately held mortgages, see RPAPL §1921).

4) Real property tax bills and receipts (county, town, school), tax searches (for all villages) and water bills ordered by Seller's attorney and forwarded to Buyer's attorney.

5) Buyer's and Seller's attorneys each advise the other regarding satisfaction of contract contingencies. If a contingency is not satisfied or removed by the contract date, the attorneys should determine status and consult with their clients concerning cancellation rights or obtaining written extensions of contingency dates.

6) Under the MCBA/GRAR Form Contract, acceptance of a mortgage commitment by Buyer is a waiver and satisfaction of the mortgage contingency. It is advisable that Buyer's attorney review commitment prior to acceptance. Buyer's attorney should make sure that either Buyer or attorney is resolving all conditions (including those that relate to septic system or well), that contract closing date precedes commitment expiration, (and, if not, consider negotiating earlier closing date or mortgage extension), and should advise Seller's attorney of any conditions to be met by Seller or with Seller's participation.

*Protocol Note: Buyer's attorney should advise Seller's attorney of satisfaction of contract contingencies at the earliest opportunity. Special note should be made if there are any conditions which Seller must fulfill or cooperate in fulfilling. At this time, Seller's attorney should also be notified of survey certifications, the commitment expiration date and who the lender's closing attorneys are.*

- 7) If commitment requires repairs, attorneys should determine responsibility under contract for making repairs or credits and, if necessary, arrange for Buyer's access to property to make repairs if Buyer is responsible.
- 8) Buyer's attorney reviews title and orders title insurance. Buyer's attorney needs to discuss availability of owner's title insurance with client. Check the commitment letter and check with lender's attorney for any special requirements.
- 9) Buyer's attorney to collect applicable documentation from Seller's attorney regarding all representations and warranties made by Seller in the contract (e.g. certificate of occupancy, zoning compliance, legal subdivision lot, copies of building permits for additions, copies of leases, operability of septic or well).
- 10) Buyer's attorney confirms whether Buyer needed and received: agricultural district disclosure (RPL §333-c); and whether resubdivision is required (RPL §333(1-e) (ii)). Resubdivision is required if only a portion of the lot is to be conveyed or if two or more lots are to be combined.
- 11) Respective attorneys determine who will execute documents:
  - a) Will power of attorney be used? If so, prepare, record, notify other attorney and mortgage lender's attorney and determine any requirements that they may have. Does power of attorney contain language to survive subsequent incompetency of principal? Provide affidavit of non-revocation of power of attorney or other documentation of authority of attorney-in-fact to act. (See General Obligations Law §5-1501 *et seq.*)
  - b) Are parties executing the documents competent? Authorized?
  - c) Some lenders will require a confirmatory phone call at closing from the principal executing the power of attorney.
- 12) Entities as parties.
  - a) Determine who is authorized to sign under entity documentation (partnership agreement, bylaws, operating agreement) and prepare authorization or resolution if necessary.
  - b) Corporate seller.
    - (i) If non-profit or religious corporation seller, determine whether court order is required and proceed to obtain (See NPCL § 511, RCL § 12).
    - (ii) Obtain franchise tax search.
    - (iii) If relocation company, note that contract may either give it power or authority to facilitate closing.

- (iv) If foreign corporation, get proof of authority to do business in New York State and Certification of Good Standing in State of incorporation.
  - (v) Corporate seal generally not required unless recited in acknowledgement.
  - (vi) Board of Directors resolution generally required.
- c) Limited Liability Companies/Limited Liability partnerships
- (i) Review: Articles of Organization, filing receipt, proof of publication, Certificate of Good Standing for the entity.
  - (ii) Review: Operating Agreement for LLC/LLP and any amendments thereto regarding requisite authority of managers/members to approve transaction and execute documents on behalf of the entity.
- Note: Any authorized member can execute documents on behalf of a member managed LLC).*
- (iii) Obtain and review appropriate consents and or certificates as required by the Operating Agreement.

13) Transfer Tax and "Mansion" Tax

- a) Transfer tax of \$2 for each \$500.00, or fractional part thereof, of consideration is due at closing (see New York Tax Law §§ 1400 *et seq.*). The tax is computed and reported on form TP-584 which must be filed with the Deed. The tax is usually paid by the Seller. (See MCBA/GRAR forms).
- b) Additional tax may be required if consideration for residential property is \$1,000,000 or more. (See Tax Law §§ 1402-a, 1404 *et seq.*).

14) Does the property include an interest in a Homeowner's Association? If so:

- a) Seller's attorney orders proof of payment of common charges from Association's managing agent.
- b) Both attorneys review contract to see if instrument survey map is to be provided. MCBA Form Contract (4/99) requires a survey.
- c) Both attorneys review contract to determine if homeowners insurance is under a master policy. If so, Seller's attorney provides all known information to Buyer's attorney so that he can order proof of insurance from managing agent. Remind Buyer to obtain separate insurance coverage for Buyer's personal property.

- d) Buyer's attorney obtains from Seller's attorney all documents listed in contract (Note that the offering plan is relevant if the offering is still open). Review with Buyer the impact of the recorded declaration.
  - e) Engineer's inspection
  - *Practice Pointer: Advisable for Buyer's attorney to call managing agent to inquire about special assessments, capital improvements, litigation and financial information.*
- 15) Is the property a Condominium? If so:
- a) Seller's attorney orders proof of payment of common charges from managing agent.
  - b) Maps – Seller's attorney orders and provides county clerk certified copy of condominium map filed in Civil Actions and Proceedings files of Clerk's Office.
  - c) Both attorneys review contract to determine if homeowners insurance is under a master policy. If so, Seller's attorney provides all known information to Buyer's attorney so that he can order proof of insurance from managing agent. Remind Buyer to obtain separate insurance coverage for Buyer's personal property.
  - d) Buyer's attorney obtains from Seller's attorney all documents listed in contract (Note that the offering plan is relevant if the offering is still open). Review with Buyer the impact of the recorded declaration.
  - *Practice Pointer: Advisable for Buyer's attorney to call managing agent to inquire about special assessments, capital improvements, litigation, and financial information.*
- 16) Are there rental units in the property? If so:
- a) Buyer's attorney obtains copies of leases (or representation of no written leases) and reviews.
  - b) Buyer's attorney verifies security deposits with Seller's attorney.
  - c) Buyer's attorney investigates need for and availability of Certificate of Occupancy ("C of O").
  - d) Even if no new C of O required, Buyer's attorney requests from Seller's attorney the original Certificate of Occupancy. If not available, request zoning compliance letter from municipality.



- e) Rent roll from Seller (lists tenants, terms of leases and expiration dates, rent, square footage rented or apartment number, security deposits).
- f) Security deposits to be transferred (see General Obligations Law § 7-105 and, if 6 or more units, § 7-108).
- g) Recommend Buyer meet, speak with tenants to determine existence of defaults by them or Seller.
- h) Consider requiring tenant estoppel certificates from tenants, certifying rental, security deposit, expiration date, existence of no defaults.
- i) Rental Rider; Lead Based Paint; EPA.

17) Is each Seller a U.S. citizen? If not, check need for Foreign Investment in Real Property Tax Act compliance (26 U.S. C. §§ 897, 1445, especially §1445(b)(2) and (b)(5)). Buyer and Buyer's agent has liability if you do not get affidavit.

18) Is a new certificate of occupancy required? For example, required in Village of Fairport, East Rochester, City of Canandaigua, and City of Rochester if two or more family dwellings).

19) Buyer's attorney reminds Buyer of issues Buyer is to cover such as pre-closing inspection or "walk-through", homeowner's insurance (including contents insurance if property is master-insured by condominium or homeowners association), flood insurance if property is in a flood hazard area, notification to telephone company, water company, measurement of fuel oil, etc. With respect to walk-through, attorney should encourage client to try appliances, plumbing, light switches, etc.; confirm the Seller has performed any repairs required under contract; make a list of any deficient or incomplete items (especially in new construction) and to contact Seller's attorney before closing, if possible, to report any problems. This enables Seller's attorney to work through any issues before closing.

## **B) CLOSING DOCUMENTS**

- 1) Seller's attorney drafts and sends deed and other closing documents to Buyer's attorney for review.
- 2) Seller's attorney determines all documents which Seller must execute before closing.
- 3) Deed
  - a) Is it from all parties in title? Did all parties in title sign the contract?
  - b) If from a corporation, include representation that property is not all or substantially all of grantor's interest and is in the normal course of business (New York Business Corporation Law § 909(b)).

- c) Form of deed (warranty, bargain & sale, quit claim) – check contract.
- 4) Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (TP 584) (Seller). (See Tax Law §§ 1400 *et seq.*).
- 5) Real Property Transfer Report (EA 5217) (RPL § 333(1-e)). Non-resident reporting.
- 6) Smoke Detector Affidavit (Executive Law § 378(5)).
- 7) Carbon Monoxide Detector (Executive Law § 378(5)a)
- 8) Title curatives, if necessary:
  - a) Boundary Line Agreements
  - b) Judgment/Bankruptcy Affidavit.
  - c) Affidavit of tax exempt status.
  - d) Mortgage payoff statement and arrange for availability of discharge if privately held mortgage.
  - e) Authorization for entity (Board resolution, Partnership authorization, member's consent).
  - f) Tax Bills.
  - g) Other.
  - h) Franchise Tax Search
  - i) Good Standing Certificate
  - j) Attorney Guarantees. Commonly used and accepted in this community for items such as water, unpaid taxes, etc. Confirm acceptability in advance of closing.

*Note: Seller's attorney should obtain MCBA Guarantee consent form (see Appendix) and have client sign. Attorney should take steps he deems necessary to issue and/or accept guarantee such as:*

- a) Confirm parameters of liability.
- b) Is client moving out of jurisdiction?
- c) Is client a long-standing client of firm?
- d) Reputation of individual issuing guarantee.

*Note: Guarantee is local custom only.*

- 9) W-9 for Sellers and allocation of proceeds among multiple Sellers (not husband-wife).
- 10) Check on 1099 reporting requirement - See Section IIIA(2).
- 11) Purchase money mortgage documents, if provided for under contract. (Note, Mortgage, Mortgage tax affidavit if Mortgagee is natural person. Tax Law § 253(1-a)(a)), Proof of insurance naming Seller as mortgagee. Buyer's attorney should review before closing. Determine who prepares (usually Seller). Contract may prescribe form.
- 12) Certificate of Occupancy, if required.
- 13) Certificate of zoning compliance, if required.
- 14) Rental Property.
  - a) Assignment of Leases.
  - b) Originals of all Leases.
  - c) Assignment of Security Deposits.
  - d) Notice of Tenants of Transfer.
  - e) Security Deposit
  - f) Notice to Tenants of Transfer

### **C) FINANCIAL ASPECTS**

- 1) Both attorneys verify deposit held by real estate broker.
- 2) Both attorneys review contract to note any credits, allowances, nonstandard charges or cost-allocation (especially prevalent in builders' contracts for new construction).
- 3) Calculate closing adjustments for pre-and post-paid taxes, other service contracts; can use 12 month/30 days, or 365 days. Recommend 365 days. Be careful in calculating adjustments for embellishments if not all installments are paid.
  - a) Taxes. No Adjustment – Re-levy.
  - b) Propane/Fuel oil – Seller arranges for tank to be filled prior to closing (topped off) with statement from oil company showing cost paid and total gallons in tank. Compute adjustment based on total gallons in tank.

- c) Sewer/Water – Establish whether town or village has separate bill and whether cost is included in taxes, and whether prospective or retrospective charge.
- d) Rent (tenants or pre- or post-closing occupancy) – actual number of days.
- e) Homeowner's Association/Condominium Charges – actual number of days.
- f) Interest on mortgage held by Seller – Actual number of days/using 365 days.
- g) Mortgage Assumption – Prorated interest based on actual number of days, also MIP, including day of closing.
- h) Security systems, other service contracts such as lawn, fertilizing, snow plowing – inquire with company; look to contract.

#### **D) SCHEDULING THE CLOSING**

- 1) Buyer's attorney coordinates with Seller's and Lender's counsel.
  - a) Obtain possible dates with client and Seller's attorney.
  - b) Schedule with Lender's attorney and inform all parties of closing date.
  - c) Confirm figures, remaining title issues and commitment conditions outstanding.
  - d) Cross check bank figures against commitment; advise Lender's attorney of all financial adjustments between Buyer and Seller for HUD-1 and possible re-underwriting of loan (particularly in new construction where extras and credits may affect price and loan to value ratio).
  - e) Advise clients of closing figures and funds that Buyer is required to bring to closing.

*Note: Some lender's counsel require a title company representative be present at closing to examine curatives and "mark up" commitment.*

- 2) Attorneys remind clients what to bring to closing.
  - a) Seller to provide to Seller's attorney – keys, garage door opener, warranties, security system information (especially if new construction).
  - b) Buyer – homeowner's insurance issued in accordance with requirements of commitment letter, any mortgage commitment curatives, extra funds to close. Advise client about availability and form of funds (bank check, wire, etc.).

3) Buyer's attorney confirms results of walk-through. Completion/repair escrow may be needed, even if Lender does not require, or in addition to what Lender requires. It is recommended that this be written. Cost estimates of repairs or replacements are recommended. There is no common/standard local form. Escrowed amount should be sufficient to enable third party to complete if Seller does not; 150% of estimated cost is standard.

4) Utilities – confirm final readings made.

5) Pre- or Post-Closing Possession Agreement (MCBA has a suggested form) should be received before closing. See MCBA suggested form in appendix.

## II. A NOTE ABOUT USE OF TRUST ACCOUNTS AND THE FORM OF CLOSING PROCEEDS

### A) TRUST ACCOUNTS

1) An attorney in possession of client funds is a fiduciary. In general, an attorney is required to segregate client funds in a separate account identified as the attorney's "Special," "Trust," or "Escrow" account. The account must be maintained in a banking institution which agrees to report dishonored checks to the Lawyer's Fund for Client Protection. The specific rules governing trust accounts are set forth in detail in 22 NYCRR §1200.46.

2) The Dishonored Check Rules set forth in 22 NYCRR §1300 require that the bank send to the Lawyer's Fund for Client Protection a dishonored check report:

“. . . whenever a properly payable instrument is presented against an attorney special, trust or escrow account which contains insufficient available funds, and the banking institution dishonors the instrument for that reason.” (22 NYCRR §1300.1(c)) [emphasis added].

Unless withdrawn as erroneously filed due to a clerical error within ten (10) days, the report is forwarded to the appropriate attorney disciplining committee.

3) Issuance of a dishonored check report may trigger an investigation or audit by the Fourth Department Grievance Committee.

4) An attorney called upon at closing to disburse funds for closing expenses or mortgage payoffs faces a particular dilemma in complying with these rules. On the one hand, the attorney is required to write checks at closing which are intended to be paid either out of the closing proceeds, or funds received from the client just prior to the closing. On the other hand, funds representing the closing proceeds cannot be deposited until the closing has gone on record, and then must go through the bank collection process before being actually received in the attorney's account.

There is no single solution to this problem.

One solution might involve requiring clients to provide funds sufficiently in advance to enable them to be collected into the attorney's account prior to closing, or the use of a special closing account where the attorney pays the disbursements from his own funds and later reimburses himself once the client funds have been collected into the trust account.

See "*Management of Attorney Trust Accounts*" in Appendix, for additional information.

## **B) FORM OF CLOSING PROCEEDS**

1) The MCBA/GRAR form contracts require that the closing proceeds be paid by certified check or official bank draft. Nevertheless, by long standing custom and practice in this community, attorneys have regularly accepted local attorney trust account checks in payment of closing proceeds.

2) There are occasions where acceptance of an attorney's trust account check in payment of closing proceeds may be impractical or unwarranted. For example, a certified check may be needed where funds must be wired to another location as soon as the closing has been recorded. The same may be true where a client's sale and purchase are scheduled to close "back to back." Other instances when an attorney's trust account check would not be an acceptable form of payment must be left to the individual attorney's judgment on a case by case basis.

3) In view of the local custom and practice, it is recommended that whenever an attorney representing a Seller intends to require strict adherence to the "official bank draft or certified check" provisions of the contract, he should so advise Buyer's attorney in writing. Such notice should be given sufficiently in advance of closing so as to enable Buyer's attorney to obtain the funds in the proper form without undue inconvenience to the attorney or the client. Arrangements will also need to be made with Buyer's lender concerning the form of any mortgage proceeds to be paid to the Seller.

4) In addition, to the extent possible, it would be wise for Buyer's and Seller's attorneys to prepare and confirm closing adjustments prior to closing.

5) Selling clients should also be made aware that funds might not be immediately available on the day of closing, or even the day after. The availability of funds from closing should be discussed with the client at the time the purchase and sale contract is approved.

## **III. CLOSING**

### **A) CONDUCT OF THE CLOSING**

1) Be courteous and patient.

2) Buyer's attorney uses checklist in the conduct of the closing to aid as he reviews all executed documents and confirm that he receives all title curatives and other documents expected. Consider addressing issues with Seller's attorney early to enable him to conclude presence at closing speedily, when possible and practicable.

3) Unless he knows the client, notary requests drivers license or other suitable identification to establish identity of those whose acknowledgments he is taking. (Buyer's/Seller's attorneys generally expected to take acknowledgments of their own clients.)

4) Closing is generally held at Lender's counsel's office.

5) Buyer's attorney should explain documents, including review of survey, tract restrictions, etc.

**B) CLOSING DOCUMENTS**

1) Review list of Closing Documents at Part III, Section 1B.

**C) RECORDING**

1) Recording of Documents. Lender's attorney generally delivers documents to abstract company with instructions to record (called "buck slip") and to notify Buyer's and Seller's attorneys when recorded.

2) Escrow. Sale and loan proceeds in residential closings are customarily disbursed in escrow, pending recording of documents. Some Lender's counsel require Seller's attorney to sign a written escrow receipt (their form – Buyer's attorneys may wish to use their own form.) For this reason, proceeds checks are frequently made payable to Seller's attorney in trust. The check itself is to be held in escrow and not deposited until the escrow is fulfilled by the recording of documents and notification by abstract company.

**D) FINANCIAL ASPECTS**

1) Amount of Funds. Lender's counsel will generally disburse a net amount, after deduction of some or all mortgage expenses. Funds are disbursed as Buyer directs, usually to pay off and satisfy Seller's mortgage and the balance to Seller's attorney. Buyer makes up the price difference. Buyer's attorney should be mindful of ethical considerations regarding available funds necessary for trust account checks or Buyer's endorsement of Buyer's bank/certified check.

2) Form of Funds. Contract calls for certified funds or official bank draft, but attorney trust account check is by local custom and usage commonly accepted. Some relocation companies and banks require certified funds.

*See Note about use of Trust Accounts and the Form of closing Proceeds in Part III, Section II above.*

3) Both attorneys review adjustments with clients. If property is benefited by Seller's tax exemption (veterans, old age), Buyer's attorney should advise Buyer of recapture of exemption amount from date of closing.

4) If \$10,000 or more in cash received, may be subject to currency transaction reporting (31 U.S.C. §§ 5311 *et seq.*).

5) Attorneys commonly render statements for their services at closing and collect their fees with other closing costs. Some send statements after closing, in normal course.

#### IV. POST-CLOSING

##### A) NOTIFICATIONS

1) Rental Properties.

a) Notices to tenants. See General Obligations Law §7-105.

b) Advice to client regarding lead paint disclosure obligations.  
MCBA/GRAR Form (5/96).

2) 1099 Reporting. If Lender's counsel conducts closing, they report. If no Lender, look to IRS Regs (26 U.S.C § 6045(e), 26 C.F.R. § 1.6045-4 or 1099 form instructions (Instructions for Forms 1099, 1098, 5498 and W-2G, published by Internal Revenue Service) to determine whether Buyer's or Seller's attorney reports. Reporting not presently required if Seller is a corporation.

##### B) REMINDERS

When transmitting closing documents to client, remind client of any unusual aspects.

1) Buyer should obtain first tax bills from taxing authority (rolls may not change).

2) Eligible Buyer should be reminded to apply for tax exemption (Note STAR tax exemption applies to all homeowners).

3) Advise Buyer where abstract of title will be kept, including address and telephone number.

##### C) STATEMENTS

Both attorneys send "closing packages" to their respective clients, including copies of all significant documents, correspondence from attorney with reminders discussed in previous section, and closing statements. Closing Statement should include accounting of all funds received, held in and disbursed from attorney's trust account.



### FORM EXAMPLES

1. Sale Engagement Letter
2. Sale Closing Statement
3. Purchase Engagement Letter
4. Purchase Closing Statement
5. Possession Agreement (Pre-Closing and Post-Closing)
6. Escrow Agreement



ATTORNEY  
(585) 258-28\_\_  
email@underbergkessler.com

\_\_\_\_\_, 2005

Re: Sale of \_\_\_\_\_ ("Property")

Dear \_\_\_\_\_:

This is to acknowledge, with appreciation, that you have retained us to represent you in the sale of your Property located at \_\_\_\_\_.

We have received and reviewed a copy of your sale contract. We will order on your behalf, at your expense, a redate of the abstract of title and an instrument survey of the Property. These documents, along with a proposed deed and other necessary items, which we will prepare, will then be sent to the buyer's attorney for examination of title.

Note that while your contract calls for a closing date of \_\_\_\_\_, 2005, this is generally considered a target date only. It is not unusual for real estate transactions to close before or after the date specified in the contract. It is advisable to keep in mind that your moving arrangements will be affected by the date on which the closing is actually scheduled to occur. If you have any reason to close on a particular day, or time of day, please let us know so that we may attempt to schedule your closing accordingly.

Please be advised that any proceeds resulting from your sale cannot be utilized or forwarded to you until the funds have cleared and can be disbursed.

While we await word from the buyer on satisfaction of their contingencies, please provide us with information/documentation as to the following:

1. The name of the bank that holds the present mortgage on your Property and the loan number, if any, and/or any other lending institution that has a lien on your Property, including any home equity line of credit you may have.

2. The location, if known, of your abstract of title.
3. The originals or copies of the current year's tax bills and receipts for payment if they have been paid.
4. A copy of an instrument survey of your Property, if available.
5. If you have added any structures such as pools, sheds, decks or fences, copies of any necessary permits you obtained from the town. If you did not obtain the required permit prior to installation, it will be necessary for you to do so before closing.
6. If your home is heated by fuel oil, please advise so that the proper adjustment may be made at the time of closing.

To assist us in preparing for the closing, kindly advise us of any arrangements between you and the buyer relating to adjustments, items of personal property not stated in the contract, or if you have arranged to deliver possession other than on the day of closing.

At the time of closing it will be necessary to pay any balances owing for real property taxes, water and sewer charges assessed against the Property as well as any mortgages that are a lien on the Property. We may be required at closing to guarantee payment of such taxes and/or mortgage loans. Your consent to such a guarantee will be included in the set of documents which you will be required to sign to complete this transaction.

Though it is not necessary for you to attend the closing of this transaction you are, of course, welcome to do so. You may sign the deed and other necessary papers in advance of the closing so that we may make the necessary arrangements if you will not be present.

Before you move, you should:

1. Notify the utility companies, i.e., telephone, water, gas and electric, that you are moving and make arrangements to have the charges for any services adjusted as of the date you move without any discontinuance of service at either your old or new residence;
2. Notify the post office and arrange to have your mail forwarded. You may obtain cards from the post office for the notification of friends, magazine publishers, etc.;

3. Notify other services, security, garbage collector, newspaper, etc.;
4. Notify the Department of Motor Vehicles of your change of address.

We will be in contact with you before the closing to discuss final tax adjustments, closing costs and availability of keys for the buyer.

It is our policy to keep accurate records of the time expended and services performed on your behalf. Our fee will be based on the time devoted to and the expertise required for handling this matter.

We have estimated our fee to be \$ \_\_\_\_\_. This assumes that the amount of work required is as we have anticipated. The fee will be billed and collected at closing. If work is required beyond what has been anticipated; for example, for negotiation of possession agreements, extension of closing or commitment dates, or multiple contracts, withdrawal from contracts, litigation, or the like, the amount of the fee will be adjusted accordingly.

Disbursements, direct costs or expenses incurred by us on your behalf incident to the transaction, will also be billed and collected at closing.

Please contact me or our paralegal, Sharon Lohman, if you have any questions or information to share at any point in the process.

Very truly yours,





underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

REAL ESTATE CLOSING STATEMENT

SELLERS:

PURCHASERS:

PROPERTY:

DATE:

\*\*\*\*\*

Credits to Sellers:

Purchase Price	\$
2005 County & Town Tax, \$ Paid Adjusted from /05 - 12/31/05	
2005-2006 School Tax, \$ Paid Adjusted from /05 - 6/30/06	
Total Amount Due Sellers	\$

Credits to Purchasers:

Deposit with	\$
2005 County & Town Tax, \$ Unpaid Adjusted from 1/1/05 -	
2005-2006 School Tax, \$ Unpaid Adjusted from 7/1/05 -	

Total Purchaser's Credits

Net Amount Due Sellers

116

Paid As Follows:

Purchaser's mortgage proceeds check  
to discharge Sellers' Mortgage

6

Purchaser's mortgage proceeds check  
to Underberg & Kessler

Purchaser's attorney's check  
to Underberg & Kessler

Total

116

\*\*\*\*\*

The above described property (the "Property") was transferred from you to the Purchaser by Warranty Deed recorded in the Monroe County Clerk's Office on \_\_\_\_\_, 2005.

The 2005 County and Town Tax in the amount of \$, due during the month of January, was paid and adjusted as shown above. The 2005-2006 School Tax in the amount of \$, due during the month of September was paid and adjusted as shown above.

The Purchasers deposited \$ with \_\_\_\_\_, and received credit for that amount at closing.

At the time of closing, your mortgage held by \_\_\_\_\_ was paid in full. The total amount paid was \$\_\_\_\_\_, and a discharge of mortgage will be recorded in the County Clerk's Office. The mortgage loan discharge figure was computed as shown on the enclosed payoff statement.

The expenses incurred with regard to your sale of the Property are shown on the attached Accounting of Funds Statement.





underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

, 2005

For Legal Services Rendered in connection with the sale of \_\_\_\_\_, New York, including: review of purchase and sale contract; arranging for redate of abstract of title and obtaining instrument survey; preparation of deed and closing documents; telephone conferences with broker, attorney for buyers; preparation of discharge of mortgage; preparation of adjustments; attendance at closing; preparation of closing statement; correspondence, telephone conferences and follow-up.

Disbursements

\$

.00

Total Due Underberg & Kessler

\$ .00

**PAID IN FULL - THANK YOU**



underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

ACCOUNTING OF FUNDS

Deposited in Underberg & Kessler  
Trust Account in connection  
with the sale of premises known as  
\_\_\_\_\_, New York

\$

DISBURSED AS FOLLOWS:

Monroe County Clerk	
Real Estate Transfer Tax	\$ .00
Record Discharge of Mortgage	.00
File Transfer Tax Affidavit	5.00

Real Estate Commission

O'Neill-Rodak  
Instrument Survey

Public Abstract Corporation  
Redate of Abstract

Underberg & Kessler  
Legal Fees and Disbursements

Net Proceeds of Sale

Total Disbursements

Balance in Trust Account

-0-

(585) 258-2\_\_\_\_\_  
@underbergkessler.com

\_\_\_\_\_, 2005

Name and Address  
of Purchaser

Re: Name of Seller ("Seller") to Name of Purchaser ("Buyer")  
Address of Subject Premises

Dear \_\_\_\_\_:

This is to acknowledge, with appreciation, that you have retained us to represent you in the purchase of the property at \_\_\_\_\_. We will, of course, represent your interests throughout the transaction by employing our resources on your behalf to the best of our ability.

We have received and reviewed a copy of your purchase contract dated \_\_\_\_\_. Pursuant to the contract, your offer is contingent upon your obtaining a conventional mortgage loan by \_\_\_\_\_, 20\_\_\_. Please mail or fax us a copy of your written mortgage commitment and good faith estimate immediately after you have received them from your lender.

Upon notification that you have received your mortgage commitment, we will notify the Seller's attorney of the removal of the mortgage contingency. We will request a redated Abstract of Title, an instrument survey of the premises and other documents required under the contract. We will forward these documents to the lender's attorneys after examination of title and request a closing date.

Moreover, as part of the terms of your purchase contract, you contractually agreed to accept title to the property subject to fence encroachments, if any, that are less than one foot inside the property line. As we discussed with you at the time of the contract approval, your agreement to take title subject to the fence encroachment is conditioned on:

the fence placement not impairing access to the property from a public or private right of way, and/or;

the fence placement not rendering the property in violation of any applicable building, zoning and/or subdivision requirements, and/or;

any easements, agreements, or restrictive covenants of record.

We will not be able to confirm the existence of these facts until we receive a redated survey from the seller.

To assist us in preparing for the closing, please advise us of any arrangements between you and the Seller relating to adjustments, items of personal property not stated in the contract, possession and so on.

Note that while your contract calls for a closing date of \_\_\_\_\_, 20\_\_, this is generally considered a target date only. It is not unusual for a real estate transaction to close before or after the date specified in the contract. If you have any reason for closing on a particular day, or time of day, please let us know so that we may attempt to schedule your closing accordingly.

We also suggest that you do the following before your moving date:

1. Notify the utility companies, i.e., telephone, water, gas and electric that you are moving and make arrangements to have the charges for any services adjusted as of the date you move without any discontinuance of service at either your old or new residence;
2. Notify the Post Office and arrange to have your mail forwarded. You may obtain cards from the Post Office for the notification of friends, magazine publishers, etc.;
3. Notify other services, security, garbage collector, newspaper, etc.;
4. If you are changing banks in conjunction with your move, arrange for the transfer of funds and the contents of your safe deposit box, if you have one.

We will be in contact with you in advance of the closing to discuss final tax adjustments, closing costs and any other necessary matters.

It is our policy to keep accurate records of the time expended and services performed on your closing. Our fee will be based on the time devoted to your work and the professional skill involved and has been estimated at \$\_\_\_\_\_. The fee will be billed and collected at closing. If work is required beyond what has been anticipated (for example, for negotiation of possession agreements, fence or boundary agreements, extension of closing or commitment dates, or multiple contracts, withdrawal from contracts, litigation, or the like), the amount of the fees and the timing of their payment will be equitably adjusted and we will discuss this with you.

Disbursements, that is, direct cost or expense incurred by us on your behalf incident to the transaction, will be collected at the time of closing or earlier.

We may also act, at our option, as examining counsel for a title company with respect to any title insurance required by you or your mortgage lender. In this capacity, we will examine title to the property, prepare a preliminary report of title, act as settlement agent for the title company at closing and report the closing to the title company. For this work, we will receive a portion (customarily sixty percent) of the premium paid for the title insurance. Your cost for title insurance will not be increased if we act as examining counsel for the title company.

The title insurance which you are required to provide for your lender only protects the lender's interests in the event of a title defect. However, this does not protect your investment. You have the option of purchasing a fee policy or owner's policy which would protect your interest in the event of a title defect or claim after closing. If a claim is made against your property, a fee policy will, in accordance with the terms of your policy, assure you of a legal defense and pay all court costs and related fees. Also, if the claim proves valid, you will be reimbursed for your actual loss up to the face amount of the policy. The one-time premium for this additional coverage would be due at closing.

It is our recommendation that each client obtain a fee title policy and we will arrange for it. You are entitled to waive your right to a policy, but state insurance regulations require us to obtain a written waiver from you. This may be completed at closing.

#### Materials and Funds Required at Closing

You will be required to have available at closing the following original items:

1. Hazard Insurance Binder and proof of payment of the first year's premium as required by the specifics of your mortgage commitment letter. We suggest that you contact your insurance agent after receipt of your commitment. It is requested that you contact us as soon as you have obtained your insurance to advise us of the amount of the annual premium. Typically, lenders require that the hazard insurance binder and receipt for the first year's premium be submitted to them 2 to 3 business days prior to closing.
2. Any other documentation referenced in your mortgage commitment letter.

3. A certified check or bank draft payable to Underberg & Kessler LLP in the combined amount of the mortgage closing expenses, the amount due seller and the amount of our firm's projected fee as quoted in this letter together with any miscellaneous charges.
4. Your personal checkbook, as a precaution, in the event of a slight shortage in your certified check.
5. Government issued, current photo identification (driver's license or passport only).

We will provide you with the final, precise closing figures as soon as they are made available to us by your lender. However, it is our experience that most lenders do not have the figures available until the day before or even the day of closing.

(OPTIONAL PARAGRAPH):

[At the time of purchasing a home, clients have expressed an interest in having their Estates reviewed, Wills prepared or revised and in obtaining Living Wills, Health Care Proxies or Powers of Attorney. In most instances, this service can be provided for \$\_\_\_\_\_ or less and can be accomplished at the same time as the closing. If you have an interest in reviewing your existing Wills or in preparing new Wills, please let us know and we will forward to you an Estate Planning Questionnaire for you to complete and return to us. We would then contact you with recommendations and the preparation of suggested documents for your review.]

Please do not hesitate to contact me or our paralegal, \_\_\_\_\_, should you have any questions or comments regarding the transaction.

Very truly yours,



underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

**REAL ESTATE CLOSING STATEMENT**

PURCHASERS:

SELLERS:

PROPERTY:

DATE:

\*\*\*\*\*

Credits to Sellers:

Purchase Price \$

2005 County & Town Tax, \$  
Paid Adjusted from - 12/31/05

2005-2006 School Tax, \$  
Paid Adjusted from - 6/30/06

Total Amount Due Sellers

Credits to Purchasers:

Deposit with \$

2005 County & Town Tax, \$  
Unpaid Adjusted from 1/1/05 -

2005-2006 School Tax, \$  
Unpaid Adjusted from 7/1/05

Total Purchasers' Credit

Net Amount Due Sellers \$



underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

Paid As Follows:

Underberg & Kessler Check to Sellers

Mortgage Proceeds Check to Sellers

Total \$

\*\*\*\*\*

The above described property (the "Property") was transferred from Sellers to you by Warranty Deed recorded in the \_\_\_\_\_ County Clerk's Office on \_\_\_\_\_, 2005. Known as Lot \_\_\_\_ of the \_\_\_\_\_ Subdivision, the property fronts \_\_\_\_\_ feet on the \_\_\_\_\_ side of \_\_\_\_\_ and is otherwise of the dimensions as shown on a map filed in the \_\_\_\_\_ County Clerk's Office in Liber \_\_\_\_\_ of Maps at Page \_\_\_\_\_ and on an instrument survey prepared by \_\_\_\_\_, a copy of which is attached.

The 2005 Town & County Tax in the amount of \$ \_\_\_\_\_, due during the month of January, was paid and adjusted as shown above. The 2005-2006 School Tax in the amount of \$ \_\_\_\_\_, due during the month of September, was paid and adjusted as shown above. All future taxes as well as your fire insurance will be paid by the bank out of your escrow account.

At the time of closing and as part of the purchase price, you obtained a first mortgage loan from \_\_\_\_\_ for \$ \_\_\_\_\_. This principal sum is repayable at \$ \_\_\_\_\_ per month for principal and interest at the initial rate of \_\_\_\_\_% per annum beginning on \_\_\_\_\_, 2005. The initial interest may change on the first day of \_\_\_\_\_ and on that day every twelfth month thereafter. The interest rate may not change by more than \_\_\_\_ percent on each change date and may never exceed \_\_\_\_%. Each month you will also pay an amount equal to one-twelfth of your annual taxes and homeowner's insurance premium. Your initial total monthly payment is \$ \_\_\_\_\_. You have the right to prepay all or part of the principal balance at any time without penalty.

At the time you purchased your property, you automatically became a member of the \_\_\_\_\_ Homeowners Association (the "Association"). You will pay a





underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

monthly common charge to the Association for the maintenance and management of your property. The Association will maintain the common areas, provide for snow and refuse removal and secure fire and extended coverage insurance on the townhomes and the garages. You should obtain your own hazard and extended insurance covering the interior of your property and your personal property. You are responsible for maintaining the exterior of your townhome. You should review your offering plan with regard to your other rights and responsibilities.

It is to be noted that the amounts you paid for tax adjustments and interest may be deductible from your 2005 income tax returns to be filed in April, 2006. Also ask your tax preparer about the possibility of deducting the amount you paid for "points".

Please contact your Town Assessor to apply for the STAR exemption.

Your mortgage loan in the amount of \$ \_\_\_\_\_ was disbursed as follows:

Deed Recording Fees	\$
Mortgage Recording Fees	
Mortgage Tax	
Credit Report Fee	
Application Fee	
Document Preparation Fee	
School Tax Escrow	
County Tax Escrow	
Fire Insurance Escrow	
Less: Aggregate Adjustment	
Total Tax and Insurance Escrow	
Bank's Legal Fee	
Mortgagee and Fee Title Policy	
Interim Interest	
Loan Discount Fees	
Mortgage Loan Proceeds to Sellers' Attorney	
<b>TOTAL DISBURSEMENTS</b>	<b>\$</b>



underberg & kessler LLP

300 Bausch & Lomb Place  
Rochester, NY 14604  
585-258-2800 PHONE  
585-258-2821 FAX

ACCOUNTING OF FUNDS

Deposited in Underberg & Kessler Trust Account in  
connection with the purchase of premises known as

\$

DISBURSED AS FOLLOWS:

Underberg & Kessler LLP  
Legal Fee and Disbursements

\$

\_\_\_\_\_, as attorneys  
Balance Purchase Price

Total Disbursements

00

Balance in Trust Account

\$-0-

(585) 258-28\_\_\_\_  
@underbergkessler.com

, 2005

RE: Purchase of

Dear:

Enclosed is a closing statement along with other papers in connection with the purchase of the above property. If you have any questions, please do not hesitate to call.

The deed will be returned to us in about one month. At that time, we will forward the deed and your owner's title insurance policy.

We wish you good health and happiness in your new home.

Very truly yours,



**POSSESSION AGREEMENT**  
**(Buyer Pre-Closing Possession)**

THIS POSSESSION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_, who reside at \_\_\_\_\_ ("Sellers") and \_\_\_\_\_, who reside at \_\_\_\_\_ ("Buyers").

WHEREAS, Sellers and Buyers have entered into a Purchase and Sale Contract for Residential Property dated \_\_\_\_\_ (the "Contract"), whereby Sellers have agreed to sell and Buyers have agreed to buy certain real property and improvements located at \_\_\_\_\_ (the "Property"); and

WHEREAS, pursuant to the terms of the Contract, the closing thereunder is to occur on or about \_\_\_\_\_; and

WHEREAS, circumstances have now arisen whereby Buyers wish to enter into possession of the Property prior to the date of title transfer; and

WHEREAS, Sellers have agreed to permit Buyers to have possession of the Property upon the terms and conditions hereinafter described; and

WHEREAS, except as expressly modified by the terms hereof, the parties intend to transfer title to the Property pursuant to the terms of the Contract.

NOW, THEREFORE, for a good and valuable consideration, Sellers and Buyers covenant and agree as follows:

1. Buyers shall be permitted to enter into possession of the Property on \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ o'clock [a.m.] [p.m.] Sellers grant Buyers the right to early possession solely as a convenience to Buyers and no tenancy shall be created thereby. As consideration for such temporary possession, Buyers shall pay Sellers rental [upon execution hereof] [on the first day of each month, during the term hereof] [at closing] in the amount of \$ \_\_\_\_\_ per [day] [month], which amount includes compensation for [real property taxes] [ \_\_\_\_\_ ] for the Property, plus such additional charges relating to the occupancy of the Property as hereinafter described. [If this Agreement is effective on a day other than the first of the month, Buyers shall pay Sellers upon execution pro-rata rental for the remaining number of days for the first partial month of possession.]
2. The closing of title to the Property shall occur on or about \_\_\_\_\_, 200\_\_, at which time it is anticipated this Possession Agreement shall terminate. Closing adjustments (including real property tax adjustments unless specifically included as rental in paragraph 1 above) pursuant to the Contract will be adjusted as of the date of closing. If the

closing shall fail to occur, for whatever reason, Buyers shall remain obligated to pay rent accruing during their period of occupancy of the Property.

3. While Buyers are in possession of the Property, Buyers shall be responsible for and pay all utility charges and service contracts, including but not limited to all refuse collection, gas, electricity, telephone, water and pure waters, cable and security system charges which are payable with respect to Buyers' use of the Property.
4. Buyers shall comply with the requirements of all laws, orders, ordinances, and regulations of any competent authority which shall impose any duty on Buyers with respect to their use or occupancy of the Property.
5. Buyers acknowledge that prior to their taking possession that they have had the opportunity to fully inspect the Property and they hereby waive any objections to closing based upon the condition thereof. This shall not be a waiver of any other rights or obligations under the terms of the Contract.
6. Buyers shall maintain the Property in good repair during their period of occupancy. Buyers shall promptly inform Sellers as to any structural repairs or other repairs the cost of which exceeds \$ \_\_\_\_\_. Unless an emergency situation exists, Buyers shall not have any repairs made unless Sellers agree to them; in any event repairs shall be made at Buyers' cost. In the event that the Contract is terminated, through no fault of Buyers, Sellers shall reimburse Buyers for any structural repairs or repairs the cost of which exceeded \$ \_\_\_\_\_ and which were either emergency repairs or approved by Sellers. Notwithstanding, Buyers shall be responsible for the cost of any repairs necessitated by damage resulting from their use of the Property during the term of this Possession Agreement.
7. Buyers shall not make any changes to the appearance of the Property during the term hereof without the prior written consent of Sellers. This prohibition includes, without limitation, the agreement by Buyers not to remove any carpeting, paint all or any portion of the interior or exterior of any structures, redecorate or remodel any portion of the property, remove any trees or landscaping or install any fencing. If Buyers do not comply with the terms of this paragraph, Buyers shall be fully responsible to Sellers for any resultant damages.
8. During the term of this Possession Agreement, Buyers shall insure the Property against fire with extended coverage endorsement in the amount of \$ \_\_\_\_\_ and shall also carry a policy of insurance covering public liability, personal liability and contents, naming Sellers as additional insureds.
9. Sellers shall have the right to inspect the Property at any time upon reasonable notice.
10. The rent obligations of Buyers hereunder shall continue until Buyers vacate the

Property, the Contract is terminated or until closing, whichever first occurs. Upon the transfer of title pursuant to the terms of the Contract, the obligations of Buyers under this Possession Agreement shall terminate.

11. Upon termination of the Contract, Buyers shall immediately vacate the Property. Notwithstanding the status of the Contract, nothing contained herein, however, shall impose any duty on Sellers, whether express or implied, to permit Buyers to remain in possession after \_\_\_\_\_ o'clock [a.m.] [p.m.] on \_\_\_\_\_, 200\_\_, at which time the possessory interest created hereunder shall terminate.
12. Buyers shall pay all costs, including reasonable attorneys fees, incurred by Sellers in evicting Buyers from the Property upon a default hereof. Buyers agree that Sellers may use summary legal proceedings to evict Buyers from the Property in the event it becomes necessary for Sellers to institute a legal action to evict Buyers.
13. Buyers shall deposit the amount of \$\_\_\_\_\_ with Sellers' attorneys to be held as a security deposit to secure Buyers' obligations hereunder. The security deposit shall be placed in an "IOLA" attorney trust account. No interest shall be paid on such funds to Sellers or Buyers. If Buyers fully comply with the terms hereof, the security deposit shall be returned or credited against the purchase price at closing. If Buyers do not fully comply with the terms hereof, the security deposit may be used by Sellers to pay amounts owed hereunder by Buyers and the balance returned.
14. Buyers shall be in default hereunder should they fail to comply with any of the terms hereof. Upon Buyers' default, Sellers shall have the authority to commence a legal action to evict Buyers.
15. The rights of possession hereunder are personal to Buyers and may not be assigned, nor may the Property be sublet.
16. Any notices given pursuant to this Possession Agreement shall be made in writing, mailed first class registered, postage prepaid, or delivered, as follows:

(1) If to Sellers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) If to Buyers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties agree that notices hereunder may be given and/or received by their respective attorneys. Copies of any notices sent to a party hereunder shall likewise be forwarded to that party's attorneys.

17. If any of the terms and provisions of the Contract conflict with any of the terms and provisions of this Possession Agreement, the terms and conditions of this Possession Agreement shall prevail. Notwithstanding, the parties expressly reserve all rights and remedies available under the Contract unless otherwise modified by this Possession Agreement.
18. Buyers agree to indemnify and hold Sellers harmless from any liability incurred as a result of Buyers' possession of the Property.
19. The parties mutually waive trial by jury in any action or proceeding commenced by them concerning the terms of this Possession Agreement. In any proceeding by Sellers to obtain possession of the Property, Buyers shall have no right to assert any counterclaims or set-offs.
20. This Possession Agreement represents the complete agreement of the parties concerning the granting of possession to the Property. No verbal agreements or promises will be binding on either party unless such agreements are in writing and signed by both parties.
21. This Possession Agreement shall inure to the benefit of and bind the heirs, successors and representatives of the parties hereto, except as herein otherwise provided.
22. This Possession Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunder set their hands as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Witness:  
\_\_\_\_\_

Sellers:  
\_\_\_\_\_

Witness:  
\_\_\_\_\_

Buyers:  
\_\_\_\_\_



**POSSESSION AGREEMENT**  
**(Seller Post-Closing Possession)**

THIS POSSESSION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_, who reside at \_\_\_\_\_ ("Sellers") and \_\_\_\_\_, who reside at \_\_\_\_\_ ("Buyers").

WHEREAS, Sellers and Buyers have entered into a Purchase and Sale Contract for Residential Property dated \_\_\_\_\_ (the "Contract"), whereby Sellers have agreed to sell and Buyers have agreed to buy certain real property and improvements located at \_\_\_\_\_ (the "Property"); and

WHEREAS, pursuant to the terms of the Contract, the closing thereunder is to occur on or about \_\_\_\_\_; and

WHEREAS, circumstances have now arisen whereby Sellers wish to remain in possession of the Property for a short term after the transfer of title to Buyers; and

WHEREAS, Buyers have agreed to permit Sellers to have possession of the Property upon the terms and conditions hereinafter described.

NOW, THEREFORE, for good and valuable consideration, Sellers and Buyers covenant and agree as follows:

1. Seller shall be permitted to remain in possession of the Property until \_\_\_\_\_, 200\_\_ at \_\_\_\_\_ o'clock [a.m.] [p.m.] Buyers grant Sellers the right to continued possession solely as a convenience to Sellers, and no tenancy shall be created thereby. As consideration for such temporary possession, Sellers shall pay Buyers rental [upon execution hereof] [on the first day of each month, during the term hereof] in the amount of \$ \_\_\_\_\_ per [day] [month], which amount includes compensation for [real property taxes] \_\_\_\_\_ for the Property, plus such additional charges relating to the occupancy of the Property as hereinafter described. [If this Agreement is effective on a day other than the first of the month, Sellers shall pay Buyers upon execution pro-rata rental for the remaining number of days for the first partial month of possession.]

2. The closing of title to the Property shall occur on \_\_\_\_\_, 200\_\_. Closing adjustments (including real property tax adjustments unless specifically included as rental in paragraph 1 above) pursuant to the Contract will be adjusted as of the date Sellers are to vacate the Property and shall be paid at closing.

3. Until Sellers vacate the Property, Sellers shall be responsible for and pay all utility charges and service contracts, including but not limited to all refuse collection, gas, electricity, telephone, water, pure waters, cable and security system charges which are payable with respect to Sellers' use of the Property.

4. Sellers shall comply with the requirements of all laws, orders, ordinances, and regulations of any competent authority which shall impose any duty on Sellers with respect to their use or occupancy of the Property.

5. Sellers shall maintain the Property in good repair, and Sellers shall deliver the Property upon the termination of this Possession Agreement in the same order and condition, normal wear and tear excepted, as exists upon transfer of title to Buyers. Sellers shall be responsible for the cost of all repairs necessitated by damage resulting from the use and occupancy of the Property by Sellers during the term of this Possession Agreement.

6. During the term of this Possession Agreement, Sellers shall insure the Property against fire with extended coverage endorsement in the amount of \$ \_\_\_\_\_. During the term of this Possession Agreement, Sellers shall carry a policy of insurance covering public liability, personal liability and contents, and naming Buyers as an additional insured.

7. Buyers shall have the right to inspect the Property at any time upon reasonable notice.

8. The obligations of Sellers hereunder shall continue until Sellers vacate the Property.

9. Sellers are required to vacate the Property on \_\_\_\_\_, 200\_\_. If, however, by mutual agreement of the parties, Sellers remain in possession of the Property after such date, the following terms and conditions shall apply:

- a. Sellers shall pay as rent to Buyers the sum of \$ \_\_\_\_\_ per day until the Property is vacated; and
- b. Sellers shall continue to be responsible for all other provisions contained in this Possession Agreement which are Sellers' obligations, including but not limited to the obligation to maintain and insure the Property and to pay all items of additional rent hereunder.

Nothing contained herein, however, shall impose any duty on Buyers, whether express or implied, to permit Sellers to remain in possession after \_\_\_\_\_ o'clock [a.m.] [p.m.] on \_\_\_\_\_, 200\_\_.

10. Sellers shall pay all costs, including reasonable attorneys fees, incurred by Buyers in evicting Sellers from the Property upon a default hereof. Sellers agree that Buyers may use summary legal proceedings to evict Sellers from the Property in the event it becomes necessary for Buyers to institute a legal action to evict Sellers.

11. Sellers shall deposit the amount of \$ \_\_\_\_\_ with Buyers' attorneys to be held as a security deposit to secure Sellers' obligations hereunder. The security deposit shall be placed in an "TOLA" attorney trust account. No interest shall be paid on such funds to Sellers or Buyers. If Sellers fully comply with the terms hereof, the security deposit shall be returned within five (5) business days after Sellers vacate the Property. If Sellers do not fully comply with the terms hereof, the security deposit may be used by Buyers to pay amounts owed hereunder by Sellers, including damages.

12. Sellers shall be in default hereunder should they fail to keep any of their promises contained herein. Upon Sellers' default, Buyers shall have the authority to commence a legal action to evict Sellers.

13. The rights of possession hereunder are personal to Sellers and may not be assigned, nor may the Property be sublet.

14. Unless otherwise extended by the terms hereof, the possessory interest created hereunder shall terminate at \_\_\_\_\_ o'clock on \_\_\_\_\_, 200\_\_.

15. Any notices given pursuant to this Possession Agreement shall be made in writing, mailed first class registered, postage prepaid, or delivered, as follows:

(1) If to Sellers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) If to Buyers, to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties agree that notices hereunder may be given and/or received by their respective attorneys. Copies of any notices sent to a party hereunder shall likewise be forwarded to that party's attorneys.

16. If any of the terms and provisions of the Contract conflict with any of the terms and provisions of this Possession Agreement, the terms and conditions of this Possession Agreement shall prevail.

17. Sellers agree to indemnify and hold Buyers harmless from any liability incurred as a result of Sellers' possession of the Property.

18. The parties mutually waive trial by jury in any action or proceeding commenced by them concerning the terms of this Possession Agreement. In any proceeding by Buyers to obtain possession of the Property, Sellers shall have no right to assert any counterclaims or set-offs.

19. This Possession Agreement represents the complete agreement of the parties concerning the granting of possession to the Property. No verbal agreements or promises will be binding on either party unless such agreements are in writing and signed by both parties.

20. This Possession Agreement shall inure to the benefit of and bind the heirs, successors and representatives of the parties hereto, except as herein otherwise provided.

21. This Possession Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunder set their hands as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Witness:

Sellers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witness:

Buyers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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**ESCROW AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between and among  
\_\_\_\_\_, (the "Escrow Agent"), and  
\_\_\_\_\_, with an address of  
\_\_\_\_\_, (the "Purchasers"), and  
\_\_\_\_\_, with an address of  
\_\_\_\_\_ (the "Sellers").

**WITNESSETH:**

WHEREAS, Purchasers have entered into a Purchase and Sale Contract last dated \_\_\_\_\_, for the premises known as \_\_\_\_\_ (the "Premises") (the "Contract"); and

WHEREAS, the Premises are not in the condition called for by the Contract; and

WHEREAS, Purchasers will not close title to the Premises unless Sellers deposit \$\_\_\_\_\_ in escrow to secure its obligation to bring the Premises in compliance with the condition called for by the Contract ("Escrow Fund"); and

WHEREAS, Sellers, Purchasers and the Escrow Agent desire to set forth their agreement as to responsibilities of the parties in connection with the Escrow Fund.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises herein, and the sum of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) each paid to the Escrow Agent, the parties hereto hereby agree as follows:

- A. The Escrow Fund shall be held in escrow by the Escrow Agent in a noninterest-bearing account. The Escrow Agent shall dispose of the proceeds held in escrow only in accordance with the provisions of this Agreement.
- B. Sellers agree to complete the following within \_\_\_\_\_ (\_\_\_\_) days hereof:

- C. In the event that Sellers notify Escrow Agent in writing that the items specified in Paragraph "B" above have been completed, and is demanding delivery of the Escrow Fund, Escrow Agent shall deliver the Escrow Fund to the Sellers provided, however, Escrow Agent shall not honor such demand until not less than seven (7) business days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to the Purchasers, nor thereafter if during such seven (7) business day period the Escrow Agent shall have received notice of objection from Purchasers. If no objection is made as allowed for herein, the Escrow Agent shall use the Escrow Funds to first pay the costs of the aforementioned window replacements and then deliver the remaining Escrow Funds, if any, to the Sellers.
- D. In the event that Purchasers notify Escrow Agent in writing that Sellers have not completed the items listed in Paragraph "B" above, within seven (7) days of the date hereof and is demanding delivery of the Escrow Fund, Escrow Agent shall deliver the Escrow Fund to the Purchasers provided, however, Escrow Agent shall not honor such demand until not less than seven (7) business days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to the Sellers, nor hereafter if during such seven (7) business day period the Escrow Agent shall have received notice of objection from Sellers. If no objection is made as allowed for herein, the Escrow Agent shall use the Escrow Funds to first pay the costs of the aforementioned window replacements and then deliver the remaining Escrow Funds, if any, to the Purchasers.
- E. Escrow Agent may deliver the Escrow Fund in accordance with the order of any court of competent jurisdiction or in accordance with any written instrument executed by both the Sellers and the Purchasers. The Escrow Agent may, at any time, deliver the Escrow Fund to a court of competent jurisdiction, whether or not pursuant to an interpleader action, or take such affirmative steps as it may elect in order to substitute an impartial party to hold the Escrow Fund and to terminate its duties as Escrow Agent. The cost of any such action shall be borne equally by the parties.
- F. Any notice to the Escrow Agent shall be sufficient only if received by the Escrow Agent within the applicable time periods set forth herein. All mailings and notices from the Escrow Agent to the Purchasers or the Sellers, or from the Purchasers or the Sellers to the Escrow Agent, shall be forwarded by registered or certified mail, return receipt requested or by overnight delivery service at the addresses set forth in the preamble to this Agreement.
- G. It is expressly understood that the Escrow Agent acts hereunder as an accommodation to the Sellers and the Purchasers and as a depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form of execution of such instruments or for the identity, authority or right of any person

executing or depositing the same or for the terms and conditions of any instrument pursuant to which the Escrow Agent or the parties may act.

- H. The Escrow Agent shall have no duties or responsibilities except those set forth in this Agreement and shall incur no liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by the Escrow Agent to be genuine, and the Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so. The Sellers and the Purchasers hereby jointly and severally agree to indemnify and save the Escrow Agent harmless from and against any and all loss, damage, claims, liabilities, judgments and other costs and expenses of every kind and nature which may be incurred by the Escrow Agent (including attorneys' fees) by reason of its acceptance of, and its performance under, this Agreement unless caused by the gross negligence or the willful default of the Escrow Agent. The Escrow Agent shall be automatically released from all responsibility and liability under this Agreement upon the Escrow Agent's deposit of the Escrow Fund in accordance with the provisions of this Agreement.
- I. The terms and provisions of this Agreement shall not create any right in any person, firm, corporation or entity other than the parties hereto and their respective successors and permitted assigns, and no third party shall have the right to enforce or benefit from the terms hereof.
- J. The Escrow Agent shall deem and treat the legal representative of the estate of any deceased party in interest hereunder as the successor in interest of said deceased person for all purposes of this Agreement.
- K. The Escrow Agent may act or refrain from acting with respect to any matter referred to herein in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from acting upon the advice of such counsel.
- L. The Escrow Agent may act as counsel to the Purchasers, whether or not the Escrow Fund shall have been delivered by the Escrow Agent to a substitute impartial party or a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have set their names and seals the day and year first above written.

ESCROW AGENT:

By: \_\_\_\_\_

SELLERS:

\_\_\_\_\_

\_\_\_\_\_

PURCHASERS:

\_\_\_\_\_

\_\_\_\_\_



SAMPLE CLOSING ADJUSTMENTS

Closing Date: September 22, 1999  
Southampton, New York

Real Estate Taxes:

Town and School

\$11,500 for 12/1/98 - 11/30/99 (prepaid by Seller)<sup>1</sup>  
\$11,500.00/12 months = \$958.33/month  
\$958.33/30 days = \$31.94/day  
Period of Buyer ownership: 2 months 9 days (9 days in September, including the day of closing, plus October and November)  
Adjustment: (2 x \$958.33) + (9 x \$31.94) = \$3,204.13 CREDIT TO SELLER

Village

\$4,700.00 for period 6/1/99 - 5/31/2000 (prepaid by seller)<sup>2</sup>  
\$4,700.00/12 months = \$391.67/month  
\$391.67/30 days = \$13.06/day  
Period of Buyer ownership: 8 months 9 days (9 days in September, plus Oct. - May inclusive)  
Adjustment: (8 x \$391.67) + (9 x \$13.06) = \$3,250.96 CREDIT TO SELLER

Fuel

\$650.00 for 2 tanks of fuel oil = \$650.00 CREDIT TO SELLER

Propane

\$133.00 for propane = \$133.00 CREDIT TO SELLER

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<sup>1</sup> DO NOT divide by 12 months if the real estate tax payment being apportioned is for a 6 month or a 4 month period. Instead divide by the appropriate number of months.

<sup>2</sup> See footnote 1 above.

SAMPLE CLOSING ADJUSTMENTS

Closing Date: June 3, 1989  
New York, New York

Maintenance (Cooperative Apartment)

\$1,150.00 payable for month of June

Purchaser pays entire June maintenance to cooperative corporation at closing

$\$1,150.00/30 \text{ days} = \$38.33/\text{day}$

$\$38.33/\text{day} \times 2 \text{ days (June 1 - June 2)} = \$76.66 \text{ CREDIT TO PURCHASER}$

**NOTE:** Many attorneys instead calculate adjustments using 365 days in the year to determine the per diem amount, and then determine the actual number of days for which the adjustment is being made. The difference in the apportionments, depending on the method used to apportion, is usually minor and not worth discussion. For example, for the Town and School Tax adjustment described above, the adjustment, using the number of actual days, would work out to: \$2,205.70 ( $\$11,500/365 \text{ days} = \$31.51/\text{day}$ ;  $\$31.51 \times 70 \text{ days (9/22-11/30, inclusive)}$ ).

**CLOSING STATEMENT**

\_\_\_\_\_, SELLERS

TO

\_\_\_\_\_, PURCHASERS

PREMISES: \_\_\_\_\_  
(ADDRESS, TOWN, STATE)

DATE: \_\_\_\_\_, 20\_\_

OUR FILE:

**PRESENT:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Sellers' Attorney  
Sellers

and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Purchasers' Attorney  
Purchasers

\_\_\_\_\_  
\_\_\_\_\_ Title Company  
(Title # )

\_\_\_\_\_ (Lending Institution)

\_\_\_\_\_ (Broker)

PURCHASE PRICE: \$ \_\_\_\_\_

CREDITS TO SELLER:

1. 20\_\_/20\_\_ Town & County (\$ \_\_\_\_\_)  
adj. \_\_\_/\_\_\_/\_\_\_ - \_\_\_/\_\_\_/\_\_\_  
\_\_\_ days @ \$ \_\_\_\_\_/day = \$ \_\_\_\_\_
2. 20\_\_/20\_\_ Village (\$ \_\_\_\_\_)  
adj. \_\_\_/\_\_\_/\_\_\_ - \_\_\_/\_\_\_/\_\_\_  
\_\_\_ days @ \$ \_\_\_\_\_/day = \$ \_\_\_\_\_
3. Fuel: \_\_\_ gals. @ \$ \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_

\$ \_\_\_\_\_

CREDITS TO PURCHASER:

- Down Payment \$ \_\_\_\_\_
1. 20\_\_/20\_\_ School Tax (\$ \_\_\_\_\_)  
adj. \_\_\_/\_\_\_/\_\_\_ - \_\_\_/\_\_\_/\_\_\_  
\_\_\_ days @ \$ \_\_\_\_\_/day = \$ \_\_\_\_\_  
\$ \_\_\_\_\_

BALANCE DUE AT CLOSING: \$ \_\_\_\_\_

The balance of the purchase price, \$ \_\_\_\_\_, was paid as follows:

- I. Mortgage Proceeds:
  - A. Sellers' Mortgage Payoff \$ \_\_\_\_\_
  - B. Sellers \_\_\_\_\_  
\$ \_\_\_\_\_
- II. Cashier's Checks:
  - A. To Sellers \$ \_\_\_\_\_
  - # \_\_\_\_\_
- III. Personal Checks:
  - B. To Sellers \$ \_\_\_\_\_
  - # \_\_\_\_\_  
\$ \_\_\_\_\_

The down payment of \$ \_\_\_\_\_, plus interest of \$ \_\_\_\_\_, totalling  
\$ \_\_\_\_\_ was disbursed as follows:

- |  |          |
|--|----------|
| 1. Title Company<br>(Deed Stamps & Sat. Fee) | \$ _____ |
| 2. (Broker)                                  | \$ _____ |
| 3. Pickup                                    | \$ _____ |
| 4. (Legal fees)                              | \$ _____ |
| 5. Sellers                                   | _____    |
| (Balance of escrow)                          | \$ _____ |



STATE OF NEW YORK )  
COUNTY OF \_\_\_\_\_ ) SS. AFFIDAVIT OF TITLE  
[CITY/VILLAGE/TOWN] OF \_\_\_\_\_ )

Re: Premises commonly known as No. \_\_\_\_\_

\_\_\_\_\_, being duly sworn, depose(s) and say(s):

[I/We] [am/are] the Mortgagor(s) named in a Mortgage given to \_\_\_\_\_  
\_\_\_\_\_, to secure the repayment of a Bond in the sum of \$ \_\_\_\_\_,  
which Bond and Mortgage are dated the date of the acknowledgment of this affidavit.

The premises described in said Mortgage have been held by the Mortgagor(s) and preceding owner(s) from whom the Mortgagor(s) derive(s) [his/her/their] title for the period of \_\_\_\_\_ years and upward; that said possession has been peaceable and undisturbed; the title has never been disputed or questioned to [my/our] knowledge or belief; nor do [I/we] know any facts by reason of which such possession or title might be disputed or questioned, or by reason of which any claim to any part of said property, or to an undivided interest therein adverse to said Mortgagor(s) might be set up or made; that the said mortgaged premises are free from all encumbrances of every nature and sort whatever, recorded or unrecorded, except the Mortgage above mentioned, and except prior mortgages, if any, given to the above institution recorded in the \_\_\_\_\_ County Clerk's Office.

[I/We] further say that there are no judgments against said Mortgagor(s) unpaid or unsatisfied of record, docketed in the Office of the Clerk of the County of \_\_\_\_\_ or in the offices of the Clerks of the United States District or Circuit Court for the \_\_\_\_\_ District of New York; that no proceedings in bankruptcy have ever been instituted against said Mortgagor(s) in any court or before any officer of any state of the United States.

[I/We] further say that the premises described in said Mortgage are the same premises described in the application to the bank for said Mortgage, and that the Mortgagor(s) or Seller(s) are now in actual constructive possession of said premises.

[I/We] further say that all the statements and representations in this affidavit contained are made in order to induce the making of the aforesaid loan.

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of New York

Qualified in \_\_\_\_\_ County  
My commission expires \_\_\_\_\_ 20\_\_.

CLAUSE TO AFFIDAVIT OF TITLE

That [my/our] attention has been brought to a certain Oil and Gas Lease granted to \_\_\_\_\_ recorded in \_\_\_\_\_ County Clerk's Office on \_\_\_\_\_, 20\_\_\_\_, in Liber \_\_\_\_\_ of Deeds at page \_\_\_\_\_.

That during [my/our] period of ownership and possession of the Premises above referred to, there have been no drilling operations conducted on the Premises, and that no receipt of rent or royalties under said lease have been received, and that, therefore, said Oil and Gas Lease has expired by its terms.



**F.I.R.P.T.A. NON-FOREIGN CERTIFICATION BY INDIVIDUAL  
TRANSFEROR**

1. Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person.
2. In order to inform the transferee that withholding of tax is not required upon the disposition by [name of transferor(s)] of the United States real property described as follows:

the undersigned transferor certifies and declares by means of this certification, the following

- a. I (we) am (are) not non-resident alien(s) for purposes of United States income taxation and,
- b. My United States taxpayer identifying number (Social Security number) is

NAME

SOCIAL SECURITY NUMBER

\_\_\_\_\_  
\_\_\_\_\_

- c. My home address is \_\_\_\_\_  
\_\_\_\_\_

- d. There are no other persons who have an ownership interest in the above described property other than those persons set forth above in subparagraph b.

3. The undersigned hereby further certifies and declares
  - a. I (we) understand that the purchaser of the above described property intends to rely on the foregoing representations in connection with the United States Foreign Investment in Real Property Tax Act. (94 Stat 2682 as amended)
  - b. I (we) understand this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained in this certification may be punished by fine, imprisonment or both.

Under penalties of perjury I (we) declare I (we) have examined carefully this certification and it is true, correct and complete.

Date: \_\_\_\_\_  
\_\_\_\_\_



PLEASE TYPE OR PRESS FIRMLY WHEN WRITING ON FORM  
 INSTRUCTIONS: [http:// www.orpa.state.ny.us](http://www.orpa.state.ny.us) or PHONE (516) 473-7222

**FOR COUNTY USE ONLY**

C1. DWPD Code \_\_\_\_\_

C2. Date Deed Received \_\_\_\_\_  
 Month Day Year

C3. Book \_\_\_\_\_ C4. Page \_\_\_\_\_

**REAL PROPERTY TRANSFER REPORT**  
 STATE OF NEW YORK  
 STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217**  
 REPEAT THE 5TH



**PROPERTY INFORMATION**

1. Property Location  
 STREET NUMBER STREET NAME  
 CITY OR TOWN POLICE ZIP CODE

2. Buyer Name  
 LAST NAME / COMPANY FIRST NAME  
 LAST NAME / COMPANY FIRST NAME

3. Tax Biller  
 Indicate whose future Tax Bill is to be used  
 If other than buyer address (or bottom of form)  
 Address LAST NAME / COMPANY FIRST NAME  
 STREET NUMBER AND STREET NAME CITY OR TOWN STATE ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed \_\_\_\_\_ of Parcels OR  Part of a Parcel *Check the boxes below as they apply*  
 4A. Financing Based with Subdivision Authority Exits   
 4B. Subdivision Approval was required for Transfer   
 4C. Parcel Approved for Subdivision with Map Provided

5. Deed Property Size  
 SQUARE FEET  ACRES  OR  ACRES

6. Seller Name  
 LAST NAME / COMPANY FIRST NAME  
 LAST NAME / COMPANY FIRST NAME

7. Check the box below which most accurately describes the use of the property at the time of sale. Check the boxes below as they apply

<input type="checkbox"/> A One Family Residential	<input type="checkbox"/> E Agricultural	<input type="checkbox"/> I Continuously Service	<input type="checkbox"/> R Ownership Type is Condominium
<input type="checkbox"/> B 2 or 3 Family Residential	<input type="checkbox"/> F Commercial	<input type="checkbox"/> J Industrial	<input type="checkbox"/> D New Construction on Vacant Land
<input type="checkbox"/> C Residential Vacant Land	<input type="checkbox"/> G Apartment	<input type="checkbox"/> K Public Govt/Use	<input type="checkbox"/> 10A Property Located within an Agricultural District
<input type="checkbox"/> D Non-Residential Vacant Land	<input type="checkbox"/> H Entertainment / Amusement	<input type="checkbox"/> L Forest	<input type="checkbox"/> 10B Buyer received a disclosure notice indicating that the property is in an Agricultural District

**SALE INFORMATION**

11. Sale Contract Date \_\_\_\_\_  
 Month Day Year

12. Date of Sale / Transfer \_\_\_\_\_  
 Month Day Year

13. Full Sale Price \_\_\_\_\_  
 Full Sale Price is the total amount paid for the property including personal property.  
 This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations. Please round to the nearest whole dollar amount.

14. Indicate the value of potential property included in the sale \_\_\_\_\_  
 \$ \_\_\_\_\_

15. Check one or more of these conditions as applicable to transfer:  
 A Sale Between Relatives or Former Partners  
 B Sale Between Related Companies or Partners in Business  
 C One of the Buyers is also a Seller  
 D Buyer or Seller is Government Agency or Lending Institution  
 E Deed Type not Warranty or Bargain and Sale (Specify Below)  
 F Sale of Fractional or Less than Fee Interest (Specify Below)  
 G Significant Change in Property Between Taxable Status and Sale Date  
 H Sale of Business is Included in Sale Price  
 I Other Unusual Factors Affecting Sale Price (Specify Below)  
 J None

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**

16. Year of Assessment Roll from which information taken \_\_\_\_\_ 17. Total Assessed Value (of all parcels in transfer) \_\_\_\_\_

18. Property Class \_\_\_\_\_ 19. School District Name \_\_\_\_\_

20. Tax Map Identifier(s) / Roll Identifier(s) (if more than four, attach sheet with additional Identifier(s))  
 \_\_\_\_\_  
 \_\_\_\_\_

**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

**BUYER**

BUYER SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

STREET NUMBER STREET NAME (IF NOT SAID)  
 CITY OR TOWN STATE ZIP CODE

**SELLER**

**BUYER'S ATTORNEY**

LAST NAME FIRST NAME  
 AREA CODE TELEPHONE NUMBER

**NEW YORK STATE COPY**

## Instructions

The attached New York Statutory Short Form Power of Attorney and New York Statutory Gifts Rider Authorization go into effect on September 12, 2010, the thirtieth day after it became law.

Although the specific language of the statutory forms cannot be changed, modifications can be made in subsection (g) of the Power of Attorney form and under paragraphs (b) and (c) of the Statutory Gifts Rider Authorization. Sample modifications to the Power of Attorney form and the Statutory Gifts Rider Authorization are also included. The modifications are provided by Kathryn Grant Madigan of Levene Gouldin & Thompson, LLP, and other State Bar volunteers, including Michael O'Connor of Delaney and O'Connor. Please note that some of these clauses are mutually exclusive and should be inserted in accordance with the direction/best interests of the Principal. You should also enter your own modifications, as appropriate, to best meet the needs of the Principal.

These forms have been formatted using Microsoft Word. When you access the Power of Attorney form or Statutory Gifts Rider, **click on the form and then press F11**. By pressing F11, the cursor will take you to the next field in the form. In order to insert the modification(s) provided, you need to copy and paste the desired modification(s) under (g) in the Power of Attorney form and (b) and/or (c) in the Statutory Gifts Rider. To add your own modification(s), simply type it/them in under (g) in the Power of Attorney form and (b) and/or (c) in the Statutory Gifts Rider, as appropriate.





If you designate more than one agent above, they must act together unless you initial the statement below.

(  ) My agents may act SEPARATELY.

**(c) DESIGNATION OF SUCCESSOR AGENT(S): (OPTIONAL)**

If any agent designated above is unable or unwilling to serve, I appoint as my successor agent(s):

\_\_\_\_\_  
*(name of successor agent)*

\_\_\_\_\_  
*(address of successor agent)*

\_\_\_\_\_  
*(name of second successor agent),*

\_\_\_\_\_  
*(address of second successor agent)*

Successor agents designated above must act together unless you initial the statement below.

(  ) My successor agents may act SEPARATELY.

You may provide for specific succession rules in this section. Insert specific succession provisions here:

**(d) This POWER OF ATTORNEY shall not be affected by my subsequent incapacity unless I have stated otherwise below, under “Modifications”.**

**(e) This POWER OF ATTORNEY DOES NOT REVOKE any Powers of Attorney previously executed by me unless I have stated otherwise below, under “Modifications”.**

If you do NOT intend to revoke your prior Powers of Attorney, and if you have granted the same authority in this Power of Attorney as you granted to another agent in a prior Power of Attorney, each agent can act separately unless you indicate under “Modifications” that the agents with the same authority are to act together.

**(f) GRANT OF AUTHORITY:**

To grant your agent some or all of the authority below, either

- (1) Initial the bracket at each authority you grant, or
- (2) Write or type the letters for each authority you grant on the blank line at (P), and initial the bracket at (P). If you initial (P), you do not need to initial the other lines.

I grant authority to my agent(s) with respect to the following subjects as defined in sections 5-1502A through 5-1502N of the New York General Obligations Law:

- (  ) (A) real estate transactions;
- (  ) (B) chattel and goods transactions;
- (  ) (C) bond, share, and commodity transactions;
- (  ) (D) banking transactions;
- (  ) (E) business operating transactions;
- (  ) (F) insurance transactions;



- (G) estate transactions;
- (H) claims and litigation;
- (I) personal and family maintenance: If you grant your agent this authority, it will allow the agent to make gifts that you customarily have made to individuals, including the agent, and charitable organizations. The total amount of all such gifts in any one calendar year cannot exceed five hundred dollars;
- (J) benefits from governmental programs or civil or military service;
- (K) health care billing and payment matters; records, reports, and statements;
- (L) retirement benefit transactions;
- (M) tax matters;
- (N) all other matters;
- (O) full and unqualified authority to my agent(s) to delegate any or all of the foregoing powers to any person or persons whom my agent(s) select;
- (P) EACH of the matters identified by the following letters: \_\_\_\_\_.

You need not initial the other lines if you initial line (P).

**(g) MODIFICATIONS: (OPTIONAL)**

In this section, you may make additional provisions, including language to limit or supplement authority granted to your agent. However, you cannot use this Modifications section to grant your agent authority to make gifts or changes to interests in your property. If you wish to grant your agent such authority, you MUST complete the Statutory Gifts Rider.

**(h) CERTAIN GIFT TRANSACTIONS: STATUTORY GIFTS RIDER (OPTIONAL)**

In order to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the grant of authority section of this document (under personal and family maintenance), you must initial the statement below and execute a Statutory Gifts Rider at the same time as this instrument. Initialing the statement below by itself does not authorize your agent to make gifts. The preparation of the Statutory Gifts Rider should be supervised by a lawyer.

(SGR) I grant my agent authority to make gifts in accordance with the terms and conditions of the Statutory Gifts Rider that supplements this Statutory Power of Attorney.

**(i) DESIGNATION OF MONITOR(S): (OPTIONAL)**

If you wish to appoint monitor(s), initial and fill in the section below:

I wish to designate \_\_\_\_\_, whose address(es) is (are) \_\_\_\_\_, as monitor(s). Upon the request of the monitor(s), my agent(s) must provide the monitor(s) with a copy of the power of attorney and a record of all transactions done or made on my behalf. Third parties holding records of such transactions shall provide the records to the monitor(s) upon request.

**(j) COMPENSATION OF AGENT(S): (OPTIONAL)**

Your agent is entitled to be reimbursed from your assets for reasonable expenses incurred on your







(5) disclose your identity as an agent whenever you act for the principal by writing or printing the principal's name and signing your own name as "agent" in either of the following manners: (Principal's Name) by (Your Signature) as Agent, or (your signature) as Agent for (Principal's Name).

You may not use the principal's assets to benefit yourself or anyone else or make gifts to yourself or anyone else unless the principal has specifically granted you that authority in this document, which is either a Statutory Gifts Rider attached to a Statutory Short Form Power of Attorney or a Non-Statutory Power of Attorney. If you have that authority, you must act according to any instructions of the principal or, where there are no such instructions, in the principal's best interest.

You may resign by giving written notice to the principal and to any co-agent, successor agent, monitor if one has been named in this document, or the principal's guardian if one has been appointed. If there is anything about this document or your responsibilities that you do not understand, you should seek legal advice.

Liability of agent: The meaning of the authority given to you is defined in New York's General Obligations Law, Article 5, Title 15. If it is found that you have violated the law or acted outside the authority granted to you in the Power of Attorney, you may be liable under the law for your violation.

**(o) AGENT'S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:**

It is not required that the principal and the agent(s) sign at the same time, nor that multiple agents sign at the same time.

I/we, \_\_\_\_\_, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as agent(s) for the principal named therein.

I/we acknowledge my/our legal responsibilities.

Agent(s) sign(s) here: ==> \_\_\_\_\_

==> \_\_\_\_\_

STATE OF NEW YORK )

) ss:

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



**(p) SUCCESSOR AGENT’S SIGNATURE AND ACKNOWLEDGMENT OF APPOINTMENT:**

It is not required that the principal and the SUCCESSOR agent(s), if any, sign at the same time, nor that multiple SUCCESSOR agents sign at the same time. Furthermore, successor agents can not use this power of attorney unless the agent(s) designated above is/are unable or unwilling to serve.

I/we, \_\_\_\_\_, have read the foregoing Power of Attorney. I am/we are the person(s) identified therein as SUCCESSOR agent(s) for the principal named therein.

Successor Agent(s) sign(s) here: ==> \_\_\_\_\_  
==> \_\_\_\_\_

STATE OF NEW YORK     )  
  )  
  )     ss:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## **Suggested Modifications (g) to the New York Statutory Short Form**

### **Monitor:**

Unless reasonable cause exists to require otherwise, the agent shall not be obligated by the monitor to provide financial details or accountings more frequently than annually.

### **Compensation of Agent:**

1. The agent shall be compensated for services in handling my financial affairs at the same rate as that of an executor or administrator of an estate, and may pay said compensation from the funds in his/her hands following the close of each calendar year or more frequently. The commission shall be calculated upon the amount of money received by him/her as income and upon income paid out, whether such income is derived from the corpus of the estate or from any other source, and also a commission for receiving and paying out corpus of the estate paid out during the period. The commissions on income and principal shall commence each year at the initial bracket. If agent is an attorney and performs any legal services for me, agent shall be entitled to reasonable attorney's fees apart from and in addition to the compensation provided for herein.

2. The agent(s) shall be compensated at a rate of \$\_\_\_\_\_/hr. for services rendered pursuant to this power of attorney.



**POWER OF ATTORNEY  
NEW YORK STATUTORY GIFTS RIDER  
AUTHORIZATION FOR CERTAIN GIFT TRANSACTIONS**

**CAUTION TO THE PRINCIPAL:** This **OPTIONAL** rider allows you to authorize your agent to make gifts in excess of an annual total of \$500 for all gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney (under personal and family maintenance), or certain other gift transactions during your lifetime. You do not have to execute this rider if you only want your agent to make gifts described in (I) of the Grant of Authority section of the statutory short form Power of Attorney and you initialed “(I)” on that section of that form. Granting any of the following authority to your agent gives your agent the authority to take actions which could significantly reduce your property or change how your property is distributed at your death. “Certain gift transactions” are described in section 5-1514 of the General Obligations Law. This Gifts Rider does not require your agent to exercise granted authority, but when he or she exercises this authority, he or she must act according to any instructions you provide, or otherwise in your best interest.

**This Gifts Rider and the Power of Attorney it supplements must be read together as a single instrument.**

**Before signing this document authorizing your agent to make gifts, you should seek legal advice to ensure that your intentions are clearly and properly expressed.**

**(a) GRANT OF LIMITED AUTHORITY TO MAKE GIFTS**

Granting gifting authority to your agent gives your agent the authority to take actions which could significantly reduce your property.

If you wish to allow your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.

To grant your agent the gifting authority provided below, initial the bracket to the left of the authority.

(\_\_\_\_\_) I grant authority to my agent to make gifts to my spouse, children and more remote descendants, and parents, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. For gifts to my children and more remote descendants, and parents, the maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code. This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

**(b) MODIFICATIONS:**

Use this section if you wish to authorize gifts in amounts smaller than the gift tax exclusion amount, in amounts in excess of the gift tax exclusion amount, gifts to other beneficiaries, or other gift transactions. Granting such authority to your agent gives your agent the authority to take actions which could significantly reduce your property and/or change how your property is distributed at your death. If you wish to authorize your agent to make gifts to himself or herself, you must separately grant that authority in subdivision (c) below.



(\_\_\_\_\_) I grant the following authority to my agent to make gifts pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest:

**(c) GRANT OF SPECIFIC AUTHORITY FOR AN AGENT TO MAKE GIFTS TO HIMSELF OR HERSELF: (OPTIONAL)**

If you wish to authorize your agent to make gifts to himself or herself, you must grant that authority in this section, indicating to which agent(s) the authorization is granted, and any limitations and guidelines.

(\_\_\_\_\_) I grant specific authority for the following agent(s) to make the following gifts to himself or herself:

This authority must be exercised pursuant to my instructions, or otherwise for purposes which the agent reasonably deems to be in my best interest.

**(d) ACCEPTANCE BY THIRD PARTIES:**

I agree to indemnify the third party for any claims that may arise against the third party because of reliance on this Statutory Gifts Rider.

**(e) SIGNATURE OF PRINCIPAL AND ACKNOWLEDGMENT:**

In Witness Whereof I have hereunto signed my name on \_\_\_\_\_, 20\_\_.

PRINCIPAL signs here: =====> \_\_\_\_\_

STATE OF NEW YORK     )  
  )     ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public



**(f) SIGNATURES OF WITNESSES:**

By signing as a witness, I acknowledge that the principal signed the Statutory Gifts Rider in my presence and the presence of the other witness, or that the principal acknowledged to me that the principal's signature was affixed by him or her or at his or her direction. I also acknowledge that the principal has stated that this Statutory Gifts Rider reflects his or her wishes and that he or she has signed it voluntarily. I am not named herein as a permissible recipient of gifts.

\_\_\_\_\_  
Signature of witness 1

\_\_\_\_\_  
Signature of witness 2

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip code

\_\_\_\_\_  
City, State, Zip code

**(g) This document prepared by:**

## Suggested Modifications to New York Statutory Gifts Rider

Please review these carefully to ensure these modifications are applicable to/desired by the Principal.

### Exclusionary Gifting Modifications

(b) to make gifts to my parents, spouse, children and other descendants, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. The maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.

(c) my agent(s), *and* \_\_\_\_\_, may make gifts to him, her or themselves, as the case may be, not to exceed, for each donee, the annual federal gift tax exclusion amount pursuant to the Internal Revenue Code. The maximum amount of the gift to each donee shall not exceed twice the gift tax exclusion amount, if my spouse agrees to split gift treatment pursuant to the Internal Revenue Code.

---

### Full Gifting Modifications

(b) Modifications

1) to transfer, gift or convey any and all property that I may own as I may do under all circumstances for purposes of gift, estate or tax planning, Medicaid planning or for whatever purposes my agent(s) deems appropriate.

2) to make or change all beneficiary designations, withdrawals, rollovers, transfers, elections and waivers under law regarding all life insurance contracts, annuity contracts, qualified plans, employee benefit plans and individual retirement accounts, whether as plan participant, as beneficiary, IRA owner or as spouse of a participant, including, without limitation, the waiver of qualified joint and survivor annuity and qualified pre-retirement survivor annuity benefits as provided in I.R.C. § 417; to authorize any distribution, transfer or rollover from all qualified plans and IRAs.

3) to create trusts, whether revocable or irrevocable, on my behalf; to fund such trusts on my behalf or to make transfers and additions to any trusts already in existence; to withdraw income or principal on my behalf from any trust; to exercise whatever trust powers or elections which I may exercise; to open, modify or terminate deposit accounts and any other joint accounts, in my name and the name of other joint tenants, bank accounts in trust form and transfer on death accounts, and to designate or change the beneficiary(ies) of such accounts.

(c) My agent(s), \_\_\_\_\_, may:

1) Transfer, gift or convey any and all property that I may own as I may do under all circumstances for purposes of gift, estate or tax planning, Medicaid planning or for

whatever purposes my agent(s) deems appropriate. This grant of authority shall include the ability of my agent(s) to transfer, gift or convey any and all property to himself, herself, or themselves, as the case may be.

2) Make or change all beneficiary designations, withdrawals, rollovers, transfers, elections and waivers under law regarding all life insurance contracts, annuity contracts, qualified plans, employee benefit plans and individual retirement accounts, whether as plan participant, as beneficiary, IRA owner or as spouse of a participant, including, without limitation, the waiver of qualified joint and survivor annuity and qualified pre-retirement survivor annuity benefits as provided in I.R.C § 417; authorize any distribution, transfer or rollover from all qualified plans and IRAs. This grant of authority shall include the ability of my agent(s) to make or change said beneficiary designations, withdrawals, rollovers, transfers, elections and waivers to name himself, herself, or themselves, as the case may be, as the beneficiary(ies) thereof.

3) Create trusts, whether revocable or irrevocable, on my behalf; fund such trusts on my behalf or make transfers and additions to any trusts already in existence; withdraw income or principal on my behalf from any trust; exercise whatever trust powers or elections which I may exercise; open, modify or terminate deposit accounts and any other joint accounts, in my name and the name of other joint tenants, bank accounts in trust form and transfer on death accounts, and designate or change the beneficiary(ies) of such accounts. This grant of authority shall include the ability of my agent(s) to create trusts or accounts naming himself, herself, or themselves, as the case may be, as the beneficiary(ies) or joint tenant(s) of such trusts or accounts.

---

## **Other Possible Modifications**

(Please review these carefully to ensure these modifications are applicable to/desired by the Principal. Some of the modifications are mutually exclusive.) Modifications may be made under paragraph (b) and/or (c) as indicated below.

### **Paragraph (b)**

1. Any gift of my property may be transferred in cash or in kind, and may pass outright to the recipient or may be transferred to a custodian under the Uniform Transfer to Minors Act, which may be established by my agent.
2. Any gift made of my property may be transferred to a trust for the benefit of the recipient. Such trust may be an existing trust or a trust which can be created by my agent for the benefit of the recipient.
3. In making gifts of my property, my "best interest" shall include gifts which would be likely to cause a reduction in estate tax due or which would carry out a plan for the protection of my assets against the costs of nursing home care in the foreseeable future.
4. My agent shall be authorized to make gifts to charities or individuals so long as such gifts are consistent with a gifting pattern I have established previously. For example, charitable pledges, regular gifts to my church or other charities may be carried out or continued at the levels at which I have previously given.



**Paragraph (b and c)**

5. My wife/husband shall be entitled to give herself/himself any amount of my property. She/he shall also be entitled to give any amount of my property to any descendant of mine without regard to equality or proportionality.
6. When a child of mine acts as agent hereunder, the agent/child shall be prohibited from making any gift to himself/herself that exceeds the least amount, which is gifted to a sibling of the agent or to the descendants, collectively, of any deceased sibling.
7. Any agent who is not my spouse or descendant shall not be eligible to receive any gift of my property hereunder.



NEW YORK STATE BAR ASSOCIATION  
REAL PROPERTY TAXATION

INCOME TAX CONSIDERATIONS

Robert G. Nassau  
BOYLAN, BROWN, CODE, VIGDOR & WILSON, LLP  
2400 Chase Square  
Rochester, New York 14604  
(585) 232-5300

A. TAX TREATMENT OF GENERAL REAL ESTATE RELATED EXPENSES

*General Rule:* Real estate related expenses are deductible by the purchaser/owner once a deed is transferred. The actual recording date of the deed is irrelevant. What matters is the date the benefits and burdens of ownership (i.e., the risk of loss and the opportunity for gain) were transferred.

1. Property Taxes

Property taxes are deductible. Internal Revenue Code ("IRC") § 164(a). Prorated property taxes are fully deductible in the year of acquisition. IRC § 164(d).

2. Interest

Interest incurred in a real estate business is deductible (IRS § 163(a)), subject to the passive loss rules discussed below.

Interest incurred on a personal residence is deductible if the interest is "qualified residence interest," defined generally as interest paid or accrued in connection with a taxpayer's "qualified residence," which is the taxpayer's principal residence and/or one other residence selected by the taxpayer for this purpose. IRS §§ 163(h)(3) and (4).

(a) Qualified residence interest includes interest paid on "acquisition indebtedness," which is indebtedness incurred to acquire, construct or substantially improve a qualified residence, and which indebtedness is secured by the residence. There is a \$1 million acquisition indebtedness limitation (\$500,000 in the case of a married individual filing separately). IRC § 163(h)(3)(B).

(b) Qualified residence interest also includes "home equity indebtedness," which is indebtedness (other than acquisition indebtedness) secured by a qualified residence, to the extent the aggregate amount of indebtedness does not exceed: the fair market value of the qualified residence, reduced by its acquisition indebtedness. The aggregate amount of home equity indebtedness cannot exceed \$100,000 (\$50,000 in the case of a married individual filing separately). IRC § 163(h)(3)(C). Home equity indebtedness can be used for any purpose (e.g., purchasing a car).

- (c) In 2007, premiums paid for “qualified mortgage insurance” in connection with acquisition indebtedness are treated as qualified residence interest (subject to a phase out for persons with adjusted gross income in excess of \$100,000 (\$50,000 in the case of a married individual filing separately)). IRC § 163(h)(3)(E) and 163(h)(4)(E).

3. Points

Points are generally deductible when paid in connection with one’s principal residence. IRC § 461(g). However, note the following:

- (c) Points must be *paid*, not just deducted from the bank’s check. The IRS requires separate funds be paid or brought to the bank at closing. Otherwise, the IRS says that the payment of the points is coterminous with the payment of the total loan itself (usually resulting in spreading the deductions over the term of the loan).
- (d) Points for a loan used to *refinance* an existing mortgage (not to acquire or improve a residence) are not immediately deductible, but may be deducted ratably over the term of the loan.
- (e) Banks are required to report to the IRS the amount of any points paid by a borrower, and whether the points were paid directly or deducted. IRC § 6050H(b)(2)(C).

4. Special Concerns to Landlords

- (f) Passive activity loss limitation: the rental of real property is defined as a passive activity, regardless of the taxpayer’s efforts, except in the case of so-called “real estate professionals.” IRC § 469(c)(2) and (7). As a general rule, passive activity losses are only deductible to the extent a taxpayer has passive activity gains. However, individuals who are not real estate professionals can use up to \$25,000 of passive losses against other income if the individual “actively participates” in the real property activity, and owns at least 10% of the property’s value. This \$25,000 allowance is phased out by 50% of the amount of the taxpayer’s modified adjusted gross income as exceeds \$100,000. As a result, the \$25,000 allowance is fully phased out when the taxpayer’s adjusted gross income exceeds \$150,000. IRC § 469(i).
- (g) In addition to interest and taxes, all ordinary and necessary business expenses (e.g., repairs, insurance, law mowing, etc.) are deductible (subject to the passive activity loss limitation rules). IRC § 162(a).
- (h) Depreciation periods:
  - Residential rental property – 27.5 years.
  - Nonresidential rental property – 39 years.

B. BASIC RULES FOR DETERMINING AMOUNT REALIZED AND COMPUTATION OF GAIN OR LOSS

The gain or loss equals the *amount realized* less the taxpayer's *basis* in the property. IRC § 1001(a).

1. Amount Realized: the amount realized is the selling price less selling expenses. IRC § 1001(b).
2. Selling Price: includes all consideration received for the property, including money or other items of value. The assumption of debts, notes, mortgages or other obligations is also considered part of the selling price.
3. Selling Expenses: include commissions, advertising, legal fees and any loan fees or "points" paid by the seller. Also includes transfer taxes, filing fees, updated searches and surveys, etc.
4. Basis: generally equals the cost to acquire the property (usually the purchase price) plus the non-deductible costs incurred in acquisition (attorney's fees, filing fees, appraisal fees, etc.). Also includes any labor, materials or other costs to perform capital improvements (but not repairs) that add to the value of the property (e.g., finishing off the basement, adding a bathroom, new plumbing or wiring, adding a new roof). Basis must be reduced by any deductible losses for fire or other casualty (unless repairs were made), or any compensation received for easements or rights of way transferred to others (unless included in income). Basis is also reduced by any depreciation taken by the taxpayer. IRC § 1012.

C. TAXATION OF GAIN/LOSS TO SELLER

1. Principal Residence of an Individual
  - (a) An individual may exclude from income up to \$250,000 of gain realized on the sale of a residence (including a cooperative) that was occupied by the taxpayer as his principal residence for an aggregate of at least two of the five years before the sale or exchange. Married individuals filing a joint return may be eligible to exclude up to \$500,000. The exclusion applies to only one sale every two years. In the case of a sale that does not satisfy the foregoing requirements, but that is occasioned by reason of a change in place of employment, health or unforeseen circumstances, the taxpayer may be eligible for a prorated exclusion. IRC § 121.
  - (b) Under IRC § 121, special rules may apply in the following circumstances: (i) where there is a deceased spouse; (ii) where spouses have been divorced and property transferred between them; (iii) where there has been an involuntary conversion of property; (iv) where part of the taxpayer's principal residence has been the subject of depreciation adjustments; and (v) where there has been a period of out-of-residence care by the taxpayer.
  - (c) Loss on the sale of a principal residence is never deductible. IRC § 165(c).

2. Properties Used in Business (Rental or Otherwise) The sale of property used in business triggers gain to the extent the amount realized exceeds the taxpayer's basis in the property. The only exceptions are:
- (a) condemnation awards under IRC § 1033 (where the taxpayer generally has two years to purchase replacement property); and
  - (b) "like-kind exchanges" under IRC § 1031, where the taxpayer "trades" his rental or business property for another piece of rental or business property. In order to qualify as a "like-kind exchange," the "new" property subject to the "trade" must be identified within 45 days of the transfer of the old property, and the new property must be transferred to the taxpayer within 180 days of the transfer of the old property.

D. INFORMATION REPORTING

In the case of a real estate transaction, the "real estate reporting person" is required to send an information return (IRS Form 1099-S) to the IRS and the seller. IRC § 6045(e). This information return sets forth the name of the seller, the sales price, and certain other information.

The "real estate reporting person" means any of the following persons involved in the transaction – in the following order (unless otherwise mutually agreed):

- (a) the person (including any attorney or title company) responsible for closing the transaction;
- (b) the mortgage lender;
- (c) the seller's broker;
- (d) the buyer's broker; or
- (e) the buyer. IRC § 6045(e)(2).

Information reporting is not required if the seller is a corporation. In addition, information reporting is not required if: the subject real estate is a residence; the sales price is \$250,000 or less; *and* the real estate reporting person receives written assurance that the residence is the principal residence of the seller, and that the full amount of the gain on the sale will be exempt from tax under IRC § 121. This \$250,000 figure is increased to \$500,000 if the written assurance includes an assurance that the seller is married. IRC § 6045(e)(5); see Rev. Proc. 98-20 for a sample of an acceptable form of seller assurance for the purpose of this exception.

E. FIRPTA

Nonresident alien individuals and foreign corporations are subject to U.S. Federal income tax on any gain recognized on the sale of United States real property. IRC § 897. (Note that, if applicable, IRC § 121 (discussed above), would override this potential tax liability.)

To ensure that this tax is actually paid, any person who purchases United States real property from a foreign person is required to deduct and withhold 10% of the amount realized (not the gain), and send that 10% to the IRS. IRC § 1445(a). In those instances where the withholding exceeds the foreign person's actual tax liability, the IRS will, upon application, expeditiously refund the excess amount to the foreign person. A purchaser who neglects to effect this withholding could be personally liable for such amount. IRC § 1461.

There are a number of exceptions to this withholding requirement. IRC § 1445(b). Most importantly:

- (a) No withholding is required if the seller of the United States real property furnishes to the buyer an affidavit stating, under penalties or perjury, the transferor's United States taxpayer identification number (i.e., one's social security number in the case of a transferor who is a United States citizen), and that the transferor is not a nonresident alien individual or foreign corporation. IRC § 1445(b)(2).
- (b) No withholding is required if the United States real property is being acquired by the buyer for use by him as a residence, *and* the amount realized does not exceed \$300,000. IRC § 1445(b)(5). Note that while no withholding is required in this situation, the seller may nevertheless be liable for income tax on any gain.

F. INSTALLMENT PAYMENT RULES

Under IRC § 453, installment reporting is available whenever a portion of the selling price is received after the year of sale. Under the installment method, a seller includes in income a portion of the total gain equal to:

$$\frac{\text{Gross profit from sale}}{\text{Total contract price}} \times \text{Principal payments received during year}$$

Payments received during the year do not include purchaser obligations (e.g., promissory notes) unless the obligations are bonds, demand obligations, or are readily tradable corporate or government obligations. IRC §§ 453(f)(3)-(5).

G. INTEREST RULES ON SELLER FINANCING

In the case of most seller-financed installment sales (certain exceptions apply), if the parties to the sale do not provide for "adequate stated interest," then interest will be imputed. IRC § 483 or 1274. This will have the effect of reducing the "purchase price" of the property for all tax purposes. "Adequate stated interest" is interest at a rate which equals or exceeds a specified Federal rate of interest (the "applicable federal rate"; "AFR").

For purposes of the imputed interest rules, the AFR is determined as follows:

<u>In the case of a debt Instrument with a term of</u>	<u>The applicable Federal Rate is the:</u>
Not over 3 years	Federal short-term rate
Over 3 years but not over 9 years	Federal mid-term rate
Over 9 years	Federal long-term rate

Each of these rates is determined by the Secretary of the Treasury, and is published monthly in Revenue Rulings. The monthly rate to be used is the lowest of the AFRs in effect any month in the three-calendar-month period ending with the month in which there is a binding contract for the sale or exchange.

Note that for 2007 transactions involving seller financing of \$4,630,300 or less, the testing rate will be the lesser of 9% compounded semiannually or 100% of the AFR. IRC § 1274A. This \$4,630,300 figure is indexed annually for inflation. (The AFR has not approached 9% in many years, so this special rate is of no present use.) Also note that seller financing provided in connection with sale-leaseback transactions must use a testing rate of 110% of the AFR. IRC § 1274(e).

It is important to recognize that these rules generally place both the buyer and the seller of property on the accrual method of accounting for both the receipt and payment of interest. However, in a transaction where there is seller financing of \$3,307,400 or less, both the buyer and the seller may elect to use the cash method of accounting for the interest on the debt, as long as the seller is not a dealer or already on the accrual method. IRC § 1274A(c). In addition, certain other transactions may also be exempt from the accrual method. IRC § 1274(c)(3).



# **TRANSFER TAXES**





## NEW YORK'S MORTGAGE RECORDING TAX

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### I. BASICS

- A. First enacted by Chapter 532 of the Laws of 1906, and reenacted as Tax Law, Article 11 by Chapter 60 of the Laws of 1909.
- B. Imposed on the privilege of recording a mortgage in New York State. A “mortgage” is defined in Tax Law, Section 250 as an instrument imposing a lien on or affecting the title to real property as security for the payment of money or the performance of an obligation. It includes, for example:

1. An executory contract for the sale of real property under which the purchaser is entitled to possession prior to delivery of the deed, taxed on the amount due under the contract.
2. Effective July 1, 1989, an assignment of rents to accrue from tenancies with respect to real property located in New York City.

An assignment of rents given as security for a guarantee of a loan had been held not to be a mortgage. *Fuel Corp. v. Gallman*, 42 AD 2d 323 (Third Department, 1977), *aff'd* 34 NYS 773.

3. A contract or agreement by which the indebtedness secured by a mortgage is increased.
4. A contract or agreement pursuant to which new funds are advanced or re-advanced under a prior recorded mortgage.

C. Regulations of the New York State Department of Taxation and Finance (the “Department”) on “Mortgage Recording Taxes” are at Subchapter N, Chapter III, Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“20 NYCRR”).

D. Tax is due on recording.

1. Tax Law, Section 253 – A mortgage subject to tax cannot be received in evidence in any action or proceeding, cannot be foreclosed, and cannot be released, discharged, assigned or extended of record unless the tax has been paid.

Tax Law, Section 258(1): “No judgment or final order in any action or proceeding shall be made for the foreclosure or the enforcement of any mortgage which is

subject to any tax imposed by this article or of any debt or obligation secured by any such mortgage, unless the taxes imposed by this article shall have been paid...”

2. Mortgage tax must be paid to enforce a note which recites that it is secured by a mortgage which is, in fact, unrecorded. *Commonwealth v. Lituchy*, 555 NYS 2d 786 (1st Department, 1990).

## II. Rates

A. Computed by an amount for each \$100 “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 such mortgage”. Tax Law, Section 253

A “major fraction” is more than half. A mortgage for \$1,050 has tax computed on \$1,000. A mortgage for \$1,050.01 has tax computed on \$1,100.

### B. New York City

1. All mortgages securing less than \$500,000 - \$2.05 for each \$100 of principal debt or obligation secured.

2. A mortgages on a 1-3 family dwelling, or on an individual residential condominium unit, securing \$500,000 or more - \$2.175 for each \$100 of principal debt or obligation secured.

3. All other mortgages securing \$500,000 or more - \$2.80 for each \$100 of principal debt or obligation secured.

Note: The commercial rate applies to a mortgage of two adjoining condominium units under common ownership which will later be combined into a single residential unit. At recording of the mortgage there is not an individual condominium unit. Letter issued by the Department’s Taxpayer’s Services Division, February 21, 1989.

C. Westchester, Nassau and Suffolk Counties - \$1.30 for each \$100 of principal debt or obligation secured in Westchester County, except for \$1.50 in the City of Yonkers. \$1.05 for each \$100 of principal debt or obligation in Nassau and Suffolk Counties. Other Counties charge \$.75, \$1.00, \$1.05 or \$1.25 per \$100. See Mortgage Recording Tax Return (MT-15) at [http://www.tax.ny.gov/pdf/2009/mortgage/mt15\\_1209.pdf](http://www.tax.ny.gov/pdf/2009/mortgage/mt15_1209.pdf).

## III. Elements of the Tax

A. Basic Tax - \$.50 per \$100 (Tax Law, Section 253)

B. Special Additional Tax - \$.25 per \$100 (Tax Law Section 253-1a)

1. Payable by the lender when either (a) the premises are improved by a structure containing six residential dwelling units or less with separate cooking facilities or (b) the mortgagor is a not-for-profit organization no part of the net earnings of which enure to the benefit of any officer, director or member and which is exempt from taxation under Internal Revenue Code Section 501.

**If the lender is tax exempt, the Special Additional Tax is payable by the mortgagor.**

a. **“(N)o one is liable to pay the special additional tax when the property is ‘principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities’ and the lender is a Federal Credit Union”. Ruling dated October 30, 1986 of the Department’s Mortgage and Land Tax Section.**

b. **Tax Law provision preventing the lender from passing through to the borrower the special additional tax with mortgages on certain types of property held preempted for federally chartered savings and loan associations under a regulation of the Federal Home Loan Bank Board (12 CFR Section 545.32 (b)(5)) which permits federal lending institutions to require a borrower “to pay necessary initial charges connected with making a loan”. Dime Savings Bank of New York v. State of New York, 579 NYS 2d 679 (Second Department, 1992). See Hudson Valley Federal Credit Union v. New York State Department of Taxation and Finance, 2012 WL 4932654 (Court of Appeals, 2012) and TSB-M-12(1)R, dated December 6, 2012, posted at [http://www.tax.ny.gov/pdf/memos/mortgage/m12\\_1r.pdf](http://www.tax.ny.gov/pdf/memos/mortgage/m12_1r.pdf).**

**2. Not payable when the mortgagee is a natural person and the premises is improved by a structure containing six residential dwelling units or less, each with separate cooking facilities. “Natural Person” exemption added by Chapter 751 of the Laws of 1986 is effective for mortgages recorded on and after January 1, 1987.**

**(i) Mortgage made to a natural person on real property improved by two or more structures containing six residential units or less, each with separate cooking facilities, is not exempt.**

**(ii) Mortgage made to a natural person on real property improved with one residential unit and one commercial unit is exempt from the special additional tax since there is no requirement that the property be principally improved by the residential unit.**

**3. Part of the Special Additional Tax is distributed to the Metropolitan Transportation Authority under Chapter 13 of the Laws of 1987 when the mortgage is on real property improved or to be improved by one or more structures containing six residential units or less, each dwelling unit having its own separate cooking facilities. Every mortgage offered for recording on and after August 1, 1987 in the counties within the Metropolitan Commuter Transportation District must indicate if it covers a residence of one to six units.**

**C. Additional Tax - \$.25 per \$100/\$.30 within the Metropolitan Commuter Transportation District (Tax Law Section 253-2a)**

**1. Where the premises are improved by either (a) a one or two family house or (b) a residential condominium unit, an exemption of the additional mortgage tax of \$.25/\$.30 per \$100 is allowed up to the first \$10,000 of the principal debt secured up to a maximum of \$25.00/\$30.00. 765**

2. Recite in the mortgage that the real property is improved or will be improved by a one or two family residence or dwelling.

3. See Tax Bulletin MR-5 (“\$10,000 Residential Property Exclusion on Certain Mortgages”) dated July 5, 2012 posted at:

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/10,000\\_residential.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/10,000_residential.htm).

#### D. New York City (Tax Law Section 253-a)

1. \$1.00 per \$100 for mortgages securing a principal debt or obligation of less than \$500,000 for a total tax of \$2.00 per \$100.

2. \$1.125 per \$100 for mortgages securing a principal debt or obligation of \$500,000 or more when the property mortgaged is a one to three family dwelling or a residential condominium unit for a total tax of \$2.125 per \$100.

3. \$1.75 per \$100 for all other mortgages securing \$500,000 or more for a total tax of \$2.75 per \$100.

4. Prior to February 1, 1982 the rate was \$.50 per \$100 for a total tax of \$1.50 per \$100. Between February 1, 1982 and prior to July 1, 1982 for (a) one to three family homes, residential condominium units and all other mortgages securing less than \$500,000 the rate was \$.50 per \$100 for a total tax of \$1.50 per \$100 and (b) for all other property securing \$500,000 or more the rate was \$1.125 per \$100 for total tax of \$2.125 per \$100. The rate was increased by chapter 57 of the Laws of 1982, enacted April 12, 1982, retroactive to all mortgages recorded on or after February 1, 1982. Retroactive application of the increase in the rate was held to be constitutional in Matter of the Petition of Arthur Holding Co., Inc., State Tax Commission (also “Department”) TSB-H-85(12)M, December 17, 1985.

#### IV. Exemptions

##### A. Generally

1. “...the taxes shall be payable on the recording of each loan subject to tax so that the party who records is the one upon whom the tax is imposed”. 1956 Att. Gen. (Inf. Opns.) 27, at 28.

2. A mortgage to an exempt entity which will assign the mortgage upon recording to the true lender(s) is exempt from recording tax if the mortgage provides that the exempt entity (as trustee, nominee or otherwise) is to present the mortgage for recording. Department Advisory Opinion (“Advisory Opinion”), TSB-A-95(15)-R, December 18, 1995. See also Advisory Opinion, TSB-A-97(5)R, April 18, 1997.

3. The loan can be funded by the assignee so long as the exempt entity records the mortgage. Advisory Opinion, TSB-A-97(4)R, March 28, 1997; Advisory Opinion, TSB-A-95(16)-R, December 22, 1995.

4. An exempt mortgage can be refinanced without the imposition of mortgage recording tax if no new funds are secured. Advisory Opinion, TSB-A-95(6)-R, July 6, 1995.

5. An otherwise non-tax exempt mortgage supplemental to an assignment of rents to an exempt entity recorded prior to the mortgage, in the City of New York, is exempt. Advisory Opinion, TSB-A-96(3)R, May 9, 1996.

## **B. Exempt Mortgages**

1. A credit for a portion of the mortgage tax paid on a construction or blanket mortgage on the condominium property, the proceeds of which were used for acquisition or development, may be allowed for mortgages on individual condominium units under Real Property Law, Section 339-ee(2), as amended by Chapter 241 of the Laws of 1989, effective July 1, 1989. No credit is allowed against the Special Additional Tax.

To obtain the credit, the proceeds of the construction or blanket mortgage must have been used for either construction of the condominium, payment of the construction mortgage, for capital expenditures or expenses for the development or operation of the condominium, or for the purchase of land and buildings for the condominium, so long as the purchase occurred no more than two years prior to the recording of the declaration. In addition, to obtain the credit, a condominium unit must be sold no more than two years after the construction or blanket mortgage was recorded.

These limitations “apply to credits for taxes paid on construction or blanket mortgages recorded on or after July 1, 1989”. Section 110.6(c), Chapter 241, Laws of 1989. Advisory Opinion, TSB-M-89-(6.1)-R, August 3, 1989.

2. Mortgages made to the Homeowners Loan Corporation, an agricultural credit association or a federal home loan bank (Tax Law, Section 253).

3. Mortgages made or given by a railroad development corporation during the first nine years of its existence (Tax Law, Section 253).

4. Under Tax Law, Section 253 mortgages substituted for other mortgages as a part of and in compliance with a plan of reorganization under the Bankruptcy Code to an amount not exceeding the amount of such mortgage indebtedness outstanding at the time of the consummation of the reorganization. Prior Department regulations interpreted this to only exempt from tax a substitute or replacement mortgage and only to the extent of the unpaid balance of the debt secured by the mortgage being substituted for or replaced.

20 NYCRR Section 644.1 now provides that mortgages made pursuant to a confirmed plan under Chapter XI of the Bankruptcy Code are exempt. Under Bankruptcy Code Section 1146(c), the “(i)ssuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer made under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax”.

**In Re Amsterdam Avenue Development Associates, 103 B.R. 454, (Bankr. SDNY, 1989). Held that the grant by a non-debtor (the purchaser from the debtor) of a mortgage to a third party lender was not exempt as it was not made by the debtor under a confirmed plan.**

See Tax Bulletin MR-15 (“Advances Secured by a Mortgage Executed Under a Confirmed Plan of Reorganization in Bankruptcy”) dated November 18, 2011, posted at:

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/advances\\_under\\_a\\_confirmed\\_plan\\_of\\_reorganization.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/advances_under_a_confirmed_plan_of_reorganization.htm)

A mortgage securing so-called debtor in possession financing is not mortgage tax exempt. See Tax Bulletin MR-165 (“Debtor-in-Possession Financing”) dated November 18, 2011, posted at:

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/debtor\\_in\\_possession\\_financing.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/debtor_in_possession_financing.htm)

**5. Mortgages made by a public benefit corporation for maintaining a public park or a public recreation center (Tax Law, Section 253).**

**6. Reverse Mortgages under Banking Law, Section 6-a, recorded on and after December 2, 1993 are exempt under Tax Law, Section 252-a on interest added to principal, and on secured amounts representing future appreciation or additional consideration for making the loan. (Chapter 613 of the Laws of 1993).**

**To claim the exemption from mortgage tax, an affidavit setting forth the age of the mortgagor(s), the type of property being mortgaged and otherwise meeting the requirements of 20 NYCRR Section 644.1 must be submitted to the recording officer at the time the reverse mortgage is offered for recording. Advisory Opinion, TSB-M-93(4)-R, May 22, 1996.**

**A reverse mortgage is excluded from the definition of a “credit line” mortgage under Tax Law, Section 253-b.**

**7. Mortgagor or mortgagee is New York State or any of its agencies, instrumentalities or political subdivisions, to the extent immune from such taxation. 20 NYCRR Section 644.1**

**a. Mortgage to the New York State Employees Retirement System held to be made to an agency of the state of New York and therefore exempt from mortgage tax. Waldorf Astoria Corporation v. New York State Tax Commission, 86 AD 2d 330 (Third Department, 1982); Petition of C. E. Towers Co., Department TSB-H-85(7)M, November 21, 1985.**

**b. Mortgages to the New York State Teachers’ Retirement System are exempt. Advisory Opinion (Petition No. M870225B), April 7, 1987.**



**c. Mortgages made by Industrial Development Agencies are exempt. Letter dated June 7, 1982 from Counsel to the Office of the State Comptroller, overruling Opinion 81-398, November 2, 1981, which held that IDA mortgages are subject to mortgage tax.**

**d. A mortgage to be presented for recording by The City University of New York, as an instrumentality of the State of New York. Advisory Opinion, (Petition No. M860728A), April 22, 1986.**

**8. Mortgages to the National Consumer Cooperative Bank under Section 109 of the National Consumer Cooperative Bank Act, 12 USC Section 3001, 3019.**

**9. Mortgagor or mortgagee is the United States of America or any of its agencies or instrumentalities, to the extent immune from such taxes. 20 NYCRR Section 644.1.**

**10. A common charge lien under the Condominium Act, Real Property Law, Article 9-B. 20 NYCRR Section 644.1.**

**11. Mortgage executed by a voluntary non-profit hospital corporation. Tax Law, Section 253(3). The New York City Register requires the following to claim exemption:**

**a. Copy of the hospital's certificate of incorporation;**

**b. Copy of the hospital's Operating Certificate from the Department of Health;**

**c. Copy of Certificate from the Public Health Council; and an**

**d. Affidavit from an officer of the hospital requesting exemption under Section 253-3, Article 11, Tax Law.**

**If the hospital was established prior to existence of Public Health Council, affidavit should state the following: "They have complied with Section 6101 of the Public Health Laws to the extent that is applies to this hospital".**

**(Interdepartmental Memorandum of the New York City Register, October 21, 1980).**

**12. Mortgages executed by or granted to the Dormitory Authority. Tax Law, Section 253(3).**

**13. Mortgages of Limited Dividend Housing Companies (Article 4, Private Housing Finance Law ("PHFL"), Housing Development Fund Companies (Article 11, PHFL), Limited-Profit Housing Companies (Article 2, PHFL), certain mortgages of a Redevelopment Company (Article 5, PHFL) and mortgages given to secure payment of loans made under Article 8-b of the PHFL. 20 NYCRR Section 644.**

#### 14. Supplemental Mortgages, Tax Law, Section 255

a. A mortgage recorded for the purpose of correcting or perfecting any recorded mortgage, or pursuant to some provision or covenant therein, or an additional mortgage spreading the lien of the recorded primary mortgage, except to the extent of any new or further indebtedness or obligation which new amount is subject to tax.

(i) Consolidation, Modification and/or Extension Agreements

(ii) Severance Agreements and Substitute Mortgages executed pursuant to a provision in the recorded primary mortgage. (No tax due on a severance agreement when the original mortgage contemplated a future severance. In *Re Bay View Towers Apartments Inc. v. State Tax Commission*, 48AD 2d 86 (Third Department, 1975).

(iii) A mortgage or other instrument given as additional collateral security for the indebtedness on which mortgage tax was paid.

(iv) Spreader Agreements involving only property outside of NYC. Mortgage tax will be imposed on the spreading of the lien of a mortgage to or from a property located in NYC, with limited exceptions. Chapter 60 of the Laws of 2004, as amended by Chapter 745 of the Laws of 2004, effective January 17, 2005.

See TSB-M-04(9)R (November 22, 2004) and TSB-M-04(12)R (December 29, 2004) posted at [http://www.tax.ny.gov/pdf/memos/mortgage/m04\\_9r.pdf](http://www.tax.ny.gov/pdf/memos/mortgage/m04_9r.pdf) and [http://www.tax.ny.gov/pdf/memos/mortgage/m04\\_12r.pdf](http://www.tax.ny.gov/pdf/memos/mortgage/m04_12r.pdf)

See also Berey, “Spreader Agreements”, NYLJ March 9, 2005, posted at: <http://www.firstamny.com/group.aspx?id=133>

b. The Section 255 exemption statement must be filed at the time of recording. If not, the tax will not be refunded. Department TSB-H-85-(11)M, December 17, 1985.

#### V. Principal Amount Secured

A. General Rule – The amount of tax is determined by reference to the amount 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”. Tax Law, Section 253.

#### B. Indefinite/Indeterminate Mortgages

1. “Dragnet” mortgages – Secure further loans to the mortgagor from the mortgagee. See *State Bank of Albany v. Fioravanti*, 51 NY 2d 638 (1980).

2. Tax Law Section 256 – If the mortgage is on its face indefinite in amount, the mortgagee can limit the taxable amount by filing “a sworn statement of the maximum amount secured or which under any contingency may be secured by the

mortgage”. Otherwise the tax is computed based on the value of the property at recording.

(a) Mortgage with both a future advances clause and a maximum amount clause held not subject to additional tax since the maximum amount secured was expressed in the mortgage. *National Bank of Stamford v. Recreational Acreage Exchange LTD*, 644 NYS 2d 600 (Third Department, 1996).

(b) Maximum amount clause

“Notwithstanding anything to the contrary contained herein, the maximum amount of principal indebtedness secured by this mortgage at execution hereof or which under any contingency may become secured hereby at any time hereafter is \$\_\_\_\_\_”.

### 3. Secured Incidental Expenses

(a) Expenses to protect the lien of the mortgage, such as litigation expense if incurred by the mortgagee to prosecute or defend the lien of the mortgage, are incidental to the principal indebtedness and do not render a mortgage indefinite. *New York ex rel Title Guarantee and Trust Company v. Grifenhagen*, 156 AD 854 (First Department, 1913) *aff’d* 209 NY 569.

Other “incidental” expenses of the mortgagee would include the payment of real estate taxes, and water and sewer charges in default.

(b) Expenses amounting to capital improvements are not incidental. In *Application of Rockefeller Center v. State Tax Commission*, 185 NYS 2d 82 (Third Department, 1959), the mortgage provided that the mortgagee could install a separate refrigeration plant on the premises if the mortgagor failed to do so and the cost thereof was to be secured by the mortgage. Held that the mortgage, absent a maximum amount clause, was indeterminate.

(c) From Letter issued August 23, 1989 by the Department confirming that the following paragraph in a mortgage would not give rise to a claim of additional mortgage recording tax:

“The paragraph reads as follows:

“Upon the occurrence of an Event of Default in the performance of any of the Mortgagor’s covenants or agreements herein, the Mortgagee may, at the option of the Mortgagee, pay or perform the same and the amount thereof, with interest at the Default Rate, shall immediately be due from the Mortgagor to the Mortgagee. To the extent that any such amounts or costs paid by the Mortgagee shall constitute payment of (i) taxes, charges or assessments which may be imposed by law upon the Premises; (ii) premiums on insurance policies covering the Premises; (iii) expenses incurred in upholding the lien of this...Mortgage, including, but not limited to the expenses of any litigation to prosecute or defend the rights and lien created by this...mortgage; or ~~(iv)~~ any amount, cost or charge to which the

Mortgagee becomes subrogated, upon payment, whether under recognized principles of law or equity, or under express statutory authority; then, and in each such event, such amounts or costs, together with interest thereon at the Default Rate, shall be added to the indebtedness secured hereby and shall be secured by this ...Mortgage. If the principal sum of the Note shall not be paid on the Maturity Date, interest shall thereafter be computed and paid at the Default Rate.

“It is our opinion that the effect of this paragraph is to merely preserve and protect the security interest of the lender on default. We do not believe the additional amounts represent principal for purposes of measuring the amount upon which the tax is to be imposed”.

4. A maximum amount statement cannot be filed nunc pro tunc as of the recording date to preclude a mortgage from being taxed as indeterminate under Tax Law, Section 256. Tax is therefore properly computed on the value of the property covered by the mortgage as of the recording date. Matter of the Petition of East 54<sup>th</sup> Street Associates, Tax Appeals Tribunal, TSB-D-90(7)-R, November 15, 1990.

5. “Breakage Costs” – The securing of breakage costs under a SWAP Agreement will not be treated as mortgage taxable indebtedness if (a) the breakage costs are included in the mortgage as part of the secured obligation and are defined as “additional interest”, (b) the swap agreement relates to the same loan the mortgage secures and not, for example, another unsecured loan, and (c) the notional amount of principal under the swap agreement is the same as the principal amount secured by the mortgage. Tax Bulletin TB-MR-30 (“Application of the Mortgage Recording Tax to Breakage Costs Secured Under Interest Rate SWAP Agreements”) dated June 5, 2012, posted at:

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/breakage\\_costs.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/breakage_costs.htm).

### C. Aggregation

The principal indebtedness secured by mortgages within the City of New York will be aggregated to determine the applicable rate of tax when the mortgages “(i) form part of the same or related transactions and (ii) have the same or related mortgagors”. It is presumed that all mortgages recorded within twelve consecutive months having the same or related mortgagors are part of a related transaction and will be treated as a single mortgage. 20 NYCRR Section 624.4.

1. Matter of Chelsea-19<sup>th</sup> Street Associates, Decision of the Department, January 31, 1984, held that three mortgages executed for different purposes by the same mortgagor to three separate mortgagees on the same parcel of property could not be aggregated to apply a higher tax rate. “There is no provision for aggregating mortgages merely because they apply to the same property”.

2. Matter of Ming Tsun Chu, Decision of the Department, April 4, 1986, TSB-H-86(13)M, held that two mortgages executed on the same date by the same mortgagor to two different mortgagees on <sup>712</sup>the same parcel of real estate are not properly

aggregated for purposes of the mortgage recording tax. “There is no provision for aggregating mortgages merely because they apply to the same property, or were executed and/or recorded on the same date”.

3. “Mortgage Aggregation Policy Statement”, Office of the New York City Register, Department of Finance, November 17, 1986.

“The indebtedness secured by a mortgage presented for recording on or after November 17, 1986 will be aggregated with the indebtedness secured by any other mortgage recorded within the immediately preceding 365-day period whenever such mortgages have been made by the same mortgagor or mortgagors to the same mortgagee or mortgagees, are secured by the same parcel or contiguous parcels of real property, contain the same or substantially similar terms, and secure debts incurred for the same or related purposes...” (Emphasis added).

a. Assume that the indebtedness under an existing mortgage assigned to a lender which consolidates that lien with a new mortgage lien will be aggregated if the both mortgages are recorded within 365 days.

b. Assume that a purchase money mortgage and a building loan mortgage made between the same borrower and lender within 365 days will be aggregated.

4. See Berey, “Tax Aggregation Rules: Traps for the Unwary”, New York Law Journal (“NYLJ”) September 30, 2002, posted at: <http://www.firstamny.com/detail.aspx?id=219&mid=17880>.

#### D. Negative amortization

Mortgage tax paid on interest to be negatively amortized can be credited against new funds advanced by the refinancing assignee to the extent that negative amortization did not take place. Matter of Jeffrey Park, LTD., Tax Appeals Tribunal, DTA 812813, dated January 4, 1996.

Note: This is contrary to the usual rule. Tax is imposed on indebtedness secured by a mortgage which may be advanced and no refund is due if the funds are not, in fact, advanced. Woodmere Knolls, Inc. v. Procacino, 383 NYS 2d 105 (Third Department., 1976). Here the mortgage amount was reduced of record to the sum advanced and credit for the “excess” mortgage tax paid was sought on new financing.

#### E. Guarantee mortgages

A mortgage securing a guarantee is not taxable on re-advances of the underlying indebtedness so long as the guaranteed indebtedness does not revolve. Advisory Opinion, TSB-A-95(13)-R, October 3, 1995.

However, see Tax Bulletin MR-570 (TB-MR-570), “Mortgage of a Guarantee Given as Security for a Credit Line Debt”, dated January 6, 2014, posted at: [http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/credit\\_line\\_debt.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/credit_line_debt.htm)

“When a mortgage secures a guarantee, it secures the guarantor’s obligation to repay the funds advanced related to the other party’s debt, up to the guarantee amount. Mortgage recording tax must be paid on the maximum amount secured, as expressed in the guarantee, when the mortgage is recorded. If the principal of the debt is advanced up to or exceeding the guaranteed amount, and then subsequently falls below the amount initially secured by the guarantee and mortgage, mortgage recording tax is imposed upon the recording of any instrument evidencing advances and re-advances, up to the guarantee amount.” Further, “[a] mortgage of a guarantee pledged as security for a credit line debt does not qualify for the exemption for advances and re-advances provided by Tax Law section 253-b.”

#### **F. Wrap Around mortgages**

If the wrap mortgagee undertakes to pay the debt service on the underlying mortgage from the payments being made on the wrap, only the equity advanced by the wrap mortgagee is taxable.

1. Mortgagee must assume the obligations of the mortgagor to make the payment on the underlying mortgage. *Petition of Emanuel Glouberman*, Decision of the Department, October 3, 1980.

2. Mortgage tax is payable only on the increase in principal indebtedness and not on the entire amount secured by the wrap mortgage. *First Fiscal Fund Corp. v. State Tax Commission*, 375 NYS 2d 433 (Third Department, 1975), affirmed 40 NY 2d 940 (1976).

3. Chapter 60 of the Laws of 2004 amended Tax Law Section 250 to require mortgage tax to be paid on the recording of a mortgage in NYC when the loan proceeds reduce the equity of the holder of the wraparound mortgage, known as a wrap mortgage. This overrules, for mortgages on property in NYC, the ruling in *City of New York v. State Tax Commission*, 516 NYS 2d 132 (Third Department, 1987). In that case, pursuant to a provision in the wrap mortgage, the wrap mortgagee refinanced the underlying mortgage, consolidating the existing mortgage with a new mortgage. The “new money” was paid to the wrap mortgagee to reduce its equity position and all costs associated with the refinancing were paid by the wrap mortgagee. The Court held that there was no new taxable indebtedness. “The mere substitution of one mortgage for another, which creates no additional indebtedness, does not create a new mortgage requiring the payment of a recording tax”. Additional mortgage tax paid under protest on the new mortgage amount was ordered to be refunded.

See TSB-M-04(9)R (November 22, 2004) and TSB-M-04(12)R (December 29, 2004) posted at [http://www.tax.ny.gov/pdf/memos/mortgage/m04\\_9r.pdf](http://www.tax.ny.gov/pdf/memos/mortgage/m04_9r.pdf) and [http://www.tax.ny.gov/pdf/memos/mortgage/m04\\_12r.pdf](http://www.tax.ny.gov/pdf/memos/mortgage/m04_12r.pdf)

#### **H. Multicounty and Multistate mortgages**

1. Multicounty mortgages – Form MT15 (“Mortgage Recording Tax Return – To be used only when the mortgaged property is located in more than one county and the additional tax and/or the New York City tax on mortgages is applicable in one or more but not all of the counties”<sup>7.74</sup>

2. Multistate Mortgages – Under Tax Law Section 260 the mortgage tax is computed upon the ratio that the net value of the New York property bears to the net value of all property where located. The net value is to be determined by the Tax Commission from proofs submitted to it by the mortgagor. When the mortgage is to be recorded before a determination is made, a sworn statement must be filed when the tax is paid to the county recorder who forwards a copy of the statement to the Tax Commission for review.

## VI. When tax is due

A. Tax Law, Section 250 –“A contract or agreement by which the indebtedness secured by any mortgage is increased or added to shall be deemed a mortgage of real property...and shall be taxable as such upon the amount of such increase or addition”.

### B. Deeds-in-lieu of Foreclosure

Tax Bulletin MR-575 (TB-MR-575), “Mortgage Recording Tax on Mortgage Transactions After a Deed in Lieu of Foreclosure”, dated January 6, 2014, and posted at [http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/deed\\_in\\_lieu.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/deed_in_lieu.htm) “explains that mortgages assigned, modified or otherwise transacted after the mortgaged property has been transferred by a deed in lieu of foreclosure are treated as new mortgages. Mortgage recording tax must be paid on the full amount of the debt secured when the new mortgage is recorded.”

### C. Negative Pledge

1. Opinion of the Attorney General, State of New York, June 28, 1927 held that an agreement not to mortgage or encumber is not subject to mortgage recording tax so long as the agreement has only a moral effect binding on the consciences of the debtors and does not affect their properties. (There was no express words of “mortgage” or “grant” in the form of the agreement in question). “Until some immediate lien is claimed or is clearly imposed by an agreement of this sort I advise that it is not taxable....

“This conclusion by no means disposes of the present question”.

2. Counsel Opinion, Department TSB-M-95(1)-R, August 9, 1995.

“To constitute a mortgage for purposes of the mortgage recording tax, a negative pledge agreement must either impose a lien on real property or affect title to real property...

“The recording of the negative pledge agreement puts the public on notice of the lender’s interest in the real property. By invoking the protections of the Recording Act, the parties will be demonstrating clearly an intent to affect conveyances to third parties...

“Accordingly, it is my opinion that negative pledge agreements constitute mortgages for purposes of the mortgage recording tax only where the agreement is recorded. I will recommend the adoption of ~~775~~ amendments to the regulations...”

3. 20 NYCRR Section 641.6 – “(A)n agreement not to transfer, sell, convey or otherwise encumber real property, otherwise known as a negative pledge agreement” is a mortgage subject to recording tax.

#### D. Real Property Law, Section 275

1. On the assignment of a mortgage to the fee owner with non-merger language no additional mortgage tax was held to be due. Matter of Joseph A. DeLorenzo, Determination of the Department, December 8, 1976.

2. Real Property Law, Section 275, as amended by Chapter 241 of the Laws of 1989, and amended by Chapter 748 of the Laws of 1990, effective July 1, 1989.

a. A mortgage no longer securing a bona fide obligation is dormant and mortgage tax is due on the further transaction of such a mortgage.

b. A Section 275 affidavit must be submitted to the County recorder with each mortgage assignment. The affiant is required to state, on knowledge, that the assignee is not acting as nominee of the mortgagor and the mortgage continues to secure a bona fide obligation.

#### 3. Compelling an Assignment of Mortgage

a. There is no right to compel a mortgage assignment absent a written agreement requiring the mortgagee to execute an assignment. *LaRuffa v. Fleet Bank, N.A.*, 689 NYS 2d 59, (First Department, 1999); *Ellsworth v. Lockwood*, 42 NY 89 (1870); *Twombly v. Cassidy*, 82 NY 155 (1880).

b. Minority View – A tenant in a mortgage foreclosure redeeming the premises could demand an assignment of the mortgage if all amounts due to the mortgagee were paid. *Goldstein v. Soledad Place Corp.*, 599 NYS 2d 213 (Supreme Court, New York County, 1993).

See Berey, “Revisiting Mortgage Assignments”, NYLJ August 24, 1998, posted at:

<http://www.firstamny.com/group.aspx?id=133>

#### E. Interest on Interest

1. “(A)ccrued interest loses its character as interest when additional interest is allowed to accrue on the unpaid interest, and, thus, becomes part of the principal indebtedness or obligation secured by the mortgage”. Advisory Opinion, TSB-A-91(5)-R, May 28, 1991.

2. May render the mortgage indefinite.



## **F. Future Advances**

### **1. Readvances Generally**

#### **a. Opinion of the Attorney General, State of New York, December 28, 1953**

(i) “Even though such re-advances are provided for by the original mortgage they create a further debt than the original principal amount although they can never increase the outstanding debt secured by the mortgage beyond that total sum. Under such circumstances the amount which may be secured is always determinable and the re-advance agreement is a taxable supplement instrument...

“...subsequent agreements evidencing advances would be taxable upon recording”.

(ii) “The agreement providing for re-advances is not rendered void because of non-payment of the recording tax [citations omitted]. Nevertheless, under Section 258 of the Tax Law, the agreement could not be received in evidence in any action or proceeding prior to payment of the recording tax thereon..”.

**b. Readvances under a modification agreement held mortgage taxable and the tax is computed on the difference between the amount of the unpaid original secured indebtedness and the stated possible maximum amount. City Title v. Orgel, 154 NYS 2d 751 (Second Department, 1956)**

### **2. Credit Line Mortgage Statutes and Title Insurance Loan Policy Endorsements in New York**

**a. Tax Law, Section 253-b – “For the purposes of this section, a “credit line mortgage” shall mean any mortgage or deed of trust, other than a mortgage or deed of trust made pursuant to a building loan contract as defined in subdivision thirteen of section two of the lien law, which states that it secured indebtedness under a note, credit agreement or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, or advances, payments and readvances, and that limits the aggregate amount at any time outstanding to a maximum amount specified in such mortgage or deed of trust.”**

**b. No mortgage tax is imposed on readvances beyond the maximum principal amount secured by a mortgage on real property improved or to be improved by a 1-6 family owner-occupied residence or dwelling. Tax Law, Section 253-b, added by Chapters 924 and 925 of the Laws of 1985, effective December 20, 1985.**

(i) No further tax is due on the transfer of real property which is improved by a 1-6 family owner-occupied residence or dwelling which is subject to the lien of a credit line mortgage to a person or

persons related to the original obligor or obligors by blood, marriage or adoption.

(ii) 20 NYCRR Section 647 (“Transfers not subject to the tax”)

(a) Transfers of other than a fee interest

(b) Transfers to a person or persons holding a fee simple interest immediately prior to the transfer

(c) Transfers to a person or entity where 50% or more of the beneficial interest in the real property after the transfer is held by the transferor or a person(s) related by blood, marriage or adoption, such as where the transfer is made to a trust for the benefit of either a minor or a transferor

Note: According to the Department of Taxation and Finance, the initial mortgagor must be a natural person, owner-occupant, but the holder of the majority interest in the entity need not be in occupancy.

(d) Transfers to a trustee in bankruptcy, a receiver, an assignee or other officer of the court. A subsequent transfer to other than an exempt person will be subject to mortgage tax

(iii) According to the Department’s Technical Services Bureau, if mortgage tax is due on account of a transfer of the mortgaged property to a person unrelated to the original obligor, tax will be imposed on the maximum principal amount that could be secured by the mortgage on the date of the transfer.

c. Readvances under credit line mortgages on other property where the mortgage is of an amount less than \$3,000,000 are exempt from the imposition of mortgage tax on readvances. Tax Law, Section 253-b, as amended by Chapters 489 and 490 of the Laws of 1996, effective as to credit line mortgages recorded on and after November 6, 1996.

(i) See “Application of the Mortgage Recording Tax to Commercial Credit Line Mortgages”, Department TSB-M-99(1)R, June 25, 1999.

(ii) See Berey, “Mortgage Tax – Department of Taxation and Finance Rulings on Commercial Credit Line Mortgages, N.Y. Real Property Law Journal, Fall 1999, posted at:  
<http://www.firstamny.com/detail.aspx?id=10&mid=17874>

(iii) See Berey, “Commercial Credit Line Mortgages” (2011), NYLJ July 27, 2011, posted at:  
<http://www.firstamny.com/detail.aspx?id=220&mid=17875>

d. Advisory Opinion (Petition No. M981215A), April 7, 1999, takes the position that a mortgage executed to secure the repayment of advances and re-advances made either to fund or to reimburse the borrower for the making of improvements upon real property will not qualify as a credit line mortgage, regardless of whether a formal building loan agreement is filed. It holds that the limiting conditions of the mortgage or the other loan documents relating to the use of the funds constitutes an "express promise" of the borrower to make improvements to real property. The mortgage will therefore be deemed to have been made pursuant to a building loan contract.

e. Title Insurance Rate Service Association, Inc. Revolving Credit Endorsements: (i) Residential Revolving Credit Endorsement ("TIRSA RCE-1"); (ii) Commercial Revolving Credit Endorsement for Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of Less than \$3,000,000 ("TIRSA RCE-2"); (iii) Commercial Revolving Credit Endorsement (Limited Term Special Coverage) for Commercial Credit Line Mortgages Which Secure a Maximum Principal Indebtedness of less than \$3,000,000 ("TIRSA RCE-3"). Issued only if the mortgage has a term of three years or less and is not a building loan; and (iv) Commercial Revolving Credit Endorsement for Commercial Credit Line Mortgages which Secure a Maximum Principal Indebtedness of \$3,000,000 or More ("TIRSA RCE-4").

RCE-4 does not insure against loss or damage based on mortgage tax being imposed on advances made after the aggregate amount of advances exceeds the face amount of the mortgage. This exclusion is not contained in RCE-1, RCE-2 and RCE-3 due to protection afforded one-to-six family owner-occupied residential real property and credit line mortgages securing a maximum principal indebtedness of less than \$3,000,000.

#### G. Mortgage Securing Part of a Larger Loan

1. Advisory Opinion, TSB-A-93(15)-R (September 3, 1993). A New York Mortgage should be capped at a maximum amount secured, contain a so-called "last dollar" provision, and, if the loan is also secured by mortgages on property outside of New York, provide that only the mortgages on the non-New York property will secure re-advances. See [http://www.tax.ny.gov/pdf/advisory\\_opinions/mortgage/a93\\_15r.pdf](http://www.tax.ny.gov/pdf/advisory_opinions/mortgage/a93_15r.pdf).

(a) See Berey, "Last Dollar Endorsements and Capping the New York Mortgage", NYLJ October 11, 1995, posted at: <http://www.firstamny.com/detail.aspx?id=11&mid=17877>.

#### H. Mortgage Partially Securing Multiple Obligations

When mortgage tax is paid on less than the full amount of multiple obligations being secured, the stated maximum amount, on which amount mortgage tax is paid on recording, will be allocated amongst the various obligations. The mortgage will be enforceable as to each obligation up to its allocated amount. See Tax Bulletin MR-580 (TB-MR-580), "Mortgage Partially Securing Multiple Debts or Obligations", dated January 7, 2013, posted at:

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/mrt/multiple\\_obligations.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/mrt/multiple_obligations.htm).

See Berey, “New York’s Mortgage Tax – Partially Securing Multiple Obligations”, N.Y. Real Property Law Journal, Spring/Summer 2013, posted at: <http://www.firstamny.com/detail.aspx?id=225&mid=19362>.

## VII. Interest, Penalties and Refunds (20 NYCRR Parts 653 and 654)

### A. Section 653.1 (“Interest penalty on underpayment of taxes in counties outside the City of New York”)

1. Interest penalty is one-half of one percent for each month or fraction of a month for the period that the taxes remain unpaid.
2. Alternatively, where it could not be determined from the face of an instrument that a tax was due, the interest penalty is imposed at the rate of one percent for each month or fraction of a month for the period that the taxes remain unpaid.
3. Where the mortgage was recorded in good faith, the Commissioner of Taxation and Finance may cancel the interest penalty in excess of one-half of one per cent per month.

### B. Section 653.2 (“Interest and penalties on underpayment of taxes within the City of New York”)

1. Interest to be imposed is the rate under Tax Law, Section 1096(e), compounded daily. The “Underpayment Rate” under Section 1096 (e)(2)(B) is the sum of the federal short-term rate plus three percent, and not less than six percent per annum. When no rate is set by the Commissioner of Taxation and Finance, the rate shall be six percent per annum.
2. Where it could not be determined from the face of an instrument that a tax was due, an interest penalty is also imposed at the rate of ten percent of the amount of taxes due for the first month and two percent of the tax due for each month thereafter, up to a maximum of twenty-five percent.
3. Where the mortgage was recorded in good faith, the Commissioner of Taxation and Finance may cancel the penalty but not the interest.

### C. Section 653.6 (“Interest on refunds of the mortgage recording tax”)

1. For mortgages of property outside of the City of New York, the rate of interest is one-half of one per cent for each month or fraction of a month
2. For mortgages of property within the City of New York, the rate of interest is the overpayment rate in Tax Law Section 1096(e). The “Overpayment Rate” under Section 1096 (e)(2)(A) is the sum of the federal short-term rate plus two percent, and not less than six percent per annum. When no rate is set by the Commissioner of Taxation and Finance, the rate shall be six percent per annum.

**3. Section 654.5 (“Interest”)** Interest is allowed when the refund is paid more than ninety days after the date on which the application for a refund is received by the Commissioner in processible form. Interest accrues to a date preceding the date of the refund check by not more than thirty days.

**D. Section 654.1 (“Procedure”)**

- 1. An application for a refund of taxes erroneously paid must be claimed within two years of the date of the erroneous payment.**
- 2. Where a refund is claimed due to the mortgagor’s exercise of the statutory right of rescission under 20 NYCRR Section 641.11 [Tax Law, Section 257-a, “Refund of mortgage taxes after rescission of certain credit transactions”], the application must be made within the later of two years from the time of the payment of the taxes or one year from the date the mortgage was discharged.**

Articles can be accessed at [www.firstamny.com](http://www.firstamny.com)

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**TRANSFER TAXES IN NEW YORK**

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**I. BASICS**

**A. New York State**

**1. Real Estate Transfer Tax (“RETT”)**

a. \$2.00 for each \$500.00 of consideration, or fractional part thereof, payable by the transferor within thirty days of the date of the transfer. The transferee is liable for payment of the RETT if it is not paid by the transferor.

b. The RETT is imposed on a deed or on any other instrument or transaction that transfers real property, or transfers a controlling economic interest in an entity having an interest in real property. The RETT also applies to the acquisition of a controlling economic interest in an entity having an interest in real property.

“Controlling interest’ means (i) in the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of such corporation, or fifty percent or more of the capital profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.” Tax Law, Section 1401 (“Definitions”)

Transfers and acquisitions of economic interests within a three year period, or within a longer period of time if made by transferors or transferees “acting in concert”, are aggregated to determine if a controlling economic interest was transferred or acquired.

c. A transfer to entity which qualifies as a real estate investment trust may be taxed at 50% of the applicable rate. Subsection (b) (2) of Tax Law, Section 1402 (“Imposition of tax”).

d. A “Combined Real Estate Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax” (Form TP-584) is to be filed with payment of any tax due within thirty days of the date of the transfer. If the transfer is pursuant to a mortgage foreclosure, or is a deed in lieu of foreclosure or a transfer of cooperative stock and a proprietary lease in lieu of a enforcement of a security interest under the Uniform Commercial Code, a partial or full mere change of identity or form of ownership or organization exemption from tax is being claimed, or credit is being claimed for tax previously paid on a certain type of conveyance, a TP-584.1 (“New York State Real Estate Tax Return Supplemental Schedules”) is also filed.

[http://www.tax.ny.gov/pdf/2007/killin/property/tp584\\_307\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/2007/killin/property/tp584_307_fill_in.pdf) (TP-584)

[http://www.tax.ny.gov/pdf/2009/property/tp584i\\_109.pdf](http://www.tax.ny.gov/pdf/2009/property/tp584i_109.pdf) (“Instructions for Form TP-584”)

[http://www.tax.ny.gov/pdf/2009/property/tp584\\_1\\_1109.pdf](http://www.tax.ny.gov/pdf/2009/property/tp584_1_1109.pdf) (TP-584.1)

[http://www.tax.ny.gov/pdf/2008/property/tp584reit\\_808.pdf](http://www.tax.ny.gov/pdf/2008/property/tp584reit_808.pdf) (TP-584-REIT)

When the real property is located in any of the Counties of New York, Brooklyn, Queens or the Bronx, transfer tax forms must be completed online in “ACRIS”, the Automated City Register Information Service, at

<http://www.nyc.gov/html/dof/html/jump/acris.shtml>

Transfer tax forms for property located in Westchester County must be completed in the Westchester County Clerk’s Property Records Electronic Portal (“PREP System”), at <https://prep.westchesterclerk.com/PREP/WebLoginNew.aspx>.

e. See Department’s Publication 576 (6/08) (“Transfer or Acquisition of a Controlling Interest in an Entity with an Interest in Real Property”), [http://www.tax.ny.gov/pdf/publications/real\\_estate/pub576.pdf](http://www.tax.ny.gov/pdf/publications/real_estate/pub576.pdf)

Also See Tax Law, Article 31 (“Real Estate Transfer Tax”) and 20 NYCRR Part 575 (“Real Estate Transfer Tax-General Provisions”). New York State’s Department of Taxation and Finance (the “Department”) posts Advisory Opinions, Technical Memoranda and Important Notices at [http://www.tax.ny.gov/pubs\\_and\\_bulls/](http://www.tax.ny.gov/pubs_and_bulls/)

## 2. Additional (“Mansion”) Tax

a. A tax of 1% of consideration or the part thereof attributable to residential real property is imposed on a conveyance of residential real property, or an interest therein, when the consideration for the entire conveyance is \$1,000,000 or more. Residential real property includes a one-to-three family house, an individual condominium unit and a cooperative apartment unit. The tax is payable by the grantee with submission of Form TP-584.

- i. The Mansion Tax does not apply to a property consisting of four or more residential units
- ii. If a building has up to three residential units and also commercial space, the tax applies to the residential portion of the property even if the value attributable to the residential units is less than \$1,000,000.

b. See Tax Law Section 1402-a (“Additional Tax”) and the Department’s Publication 577, “FAQs Regarding the Additional Tax or Transfers of Residential Real Property for \$1 Million or More” and Tax Bulletin RE-10 (TB-RE-10) issued November 7, 2011, posted at

[http://www.tax.ny.gov/pdf/publications/real\\_estate/pub577.pdf](http://www.tax.ny.gov/pdf/publications/real_estate/pub577.pdf)

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/real\\_estate\\_transfer\\_tax\\_bulletins\\_by\\_number.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/real_estate_transfer_tax_bulletins_by_number.htm)

c. See “Transfer or Acquisition of a Controlling Interest- Additional Guidance”, Tax Bulletin RE-885 (TB-RE-885) issued November 7, 2011.

[http://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/real\\_estate\\_transfer\\_tax\\_bulletins\\_by\\_number.htm](http://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/real_estate_transfer_tax_bulletins_by_number.htm)

**B. New York City – Real Property Transfer Tax (“RPTT”)**

1. The rate for the transfer of real property, or the transfer of an interest in an entity owning real property, when the property is improved by a 1-3 family residential dwelling, an individual residential condominium unit or an individual residential cooperative apartment is 1% when the consideration for the transfer is \$500,000 or less and 1.425% when the consideration for the transfer is \$500,000.01 or more. For all other property, the rate is 1.425% when the consideration for a transfer is \$500,000 or less and 2.625% when the consideration for a transfer is \$500,000.01 or more. The RPTT is payable by the transferor, but the transferee is liable for payment of the RETT if it is not paid by the transferor.
2. “Bulk Sales” – Consideration for the sale of two or more residential condominium units and on the sale of two or more residential cooperative units may be aggregated to determine the applicable RPTT rate.

a. Finance Memorandum 00-6, “Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units” (June 19, 2000), posted on the Finance Department’s website at:

[http://home2.nyc.gov/html/dof/html/pdf/00pdf/fm00\\_6.pdf](http://home2.nyc.gov/html/dof/html/pdf/00pdf/fm00_6.pdf)

- (i) Higher rate schedule (1.425%/2.625%) applies when more than one residential unit is conveyed to a single grantee
- (ii) Adjacent combined units are subject to the lower rates (1%/1.425%). “The issuance of a revised Certificate of Occupancy, a letter of completion from the Buildings Department or a revised tax lots designation reflecting the joining of two or more apartments or units will be acceptable evidence of such a combination. However, the absence of any of these documents will not be determinative.”
- (iii) “In a bulk sale of condominium units, the higher rate schedule is applied to the consideration to each deed separately, if the units are transferred by separate deeds...”
- (iv) “In a bulk sale of cooperative apartments, the higher rate schedule will be applied to the entire amount of consideration for the entire transfer and not separately to the consideration for each apartment”.



b. Finance Memorandum 00-6REV, “Real Property Transfer Tax on Bulk Sales of Cooperative Apartments and Residential Condominium Units” (September 8, 2011), posted on the Finance Department’s website at:

[http://www.nyc.gov/html/dof/downloads/pdf/00pdf/fm00\\_6.pdf](http://www.nyc.gov/html/dof/downloads/pdf/00pdf/fm00_6.pdf)

“Because condominium units are transferred by deeds, in a bulk sale of condominium units, the higher rate schedule is applied to the consideration for each deed separately if the units are transferred by separate deeds, provided each deed represents not less than a single condominium unit or tax lot. The Department will accept the taxpayer’s apportionment of the consideration for the bulk sale to each deed provided that apportionment reasonably reflects the relative value of the units transferred. In contrast, because cooperative apartments are not transferred by deed, in a bulk transfer of cooperative apartments, the higher rate schedule will be applied to the amount of consideration for the entire transfer and not separately to the consideration for each apartment.”

c. Department of Buildings Technical Policy and Procedure Notice #3/97 (“Combining Apartments to Create Larger Residential Units Without Affecting the Certificate of Occupancy”), November 3, 1997.

<http://home2.nyc.gov/html/dob/html/reference/tppn0397.shtml>

See, posted at <http://www.firstamny.com/group.aspx?id=133>, Berey, “Tax Aggregation Rules: Traps for the Unwary”, New York Law Journal (“NYLJ”) September 30, 2002; “New York City Transfer Tax on Multiple Residential Cooperatives and Condominiums”, N.Y. Real Property Law Journal, Spring 2004; and New York City’s Real Property Transfer Tax and Bulk Sales Revisited”, NYLJ November 3, 2006. See also Berey and Pack, “New York City’s Real Property Transfer Tax and Bulk Sales”, NYLJ January 19, 2005, and Berey, “Transfer Tax-Multiple Residential Cooperatives and Condominiums”, N.Y. Real Property Law Journal, Spring 2004.

3. The RPTT is imposed on a deed or on any other instrument or transaction that transfers a controlling economic interest in an entity having an interest in real property. The RPTT also applies to the acquisition of a controlling economic interest in an entity having an interest in real property.

“For purposes of this subdivision, an ‘economic interest’ in real property shall mean (1) the ownership of shares of stock in a corporation which owns real property, (2) the ownership of an interest or interests in a partnership, association or other entity which owns real property, and (3) the ownership of a beneficial interest of interests in a trust which owns real property.” Tax Law, Section 1201 (b)(ii).

“‘Controlling interest’ for purposes of this subdivision shall mean: (1) in the case of a corporation, fifty percent or more of the fair market value of all classes of stock of such corporation, or fifty percent or more of the fair market value of all classes of stock of such corporation, and (2) in the case of a partnership, association, trust or

other entity, fifty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.” Tax Law, Section 1201(b)(iv).

Transfers and acquisitions of economic interests made by “related” transferors or transferees are aggregated to determine if a controlling economic interest was transferred or acquired. “Related transfers include transfers made pursuant to a plan to either transfer or acquire a controlling interest in real property. Transfers made within a three year period are presumed to be related and are aggregated, unless the grantor(s) or grantee(s) can rebut this presumption by proving that the transfers are unrelated.” 29 RCNY Section 23-02.

Under 19 RCNY Section 23-05, when real property is transferred and less than 50% of the beneficial interests have changed, the RPTT (and possibly the RETT) may apply. See Berey, “Tax Aggregation Rules: Traps for the Unwary”, NYLJ September 30, 2002, and “The Mere Change Exemption and Controlling Interests”, N.Y. Real Property Law Journal, Summer 2001, posted at:

<http://www.firstamny.com/group.aspx?id=133>.

4. A transfer to entity which qualifies as a real estate investment trust may be taxed at 50% of the applicable rate. Subsection (x), Tax Law, Section 1201 (“Taxes administered by cities of one million or more”). Schedule R to the transfer tax return (NYC-RPTT) must be filed.
5. A NYC - Real Property Transfer Tax Return is to be filed with payment of any tax due within 15 days of the date of the transfer. When the property is located any of the Counties of New York, Brooklyn, Queens or the Bronx, the form must be completed on “ACRIS”. When the consideration is \$400,000 or more, a copy of the contract of sale or a closing statement must be submitted with the Return.
6. See Tax Law, Section 1201; New York City’s Administrative Code, Title 11, Chapter 21 (“Real Property Transfer Tax”), Section 11-2101 et seq.; and Rules and Regulations of The City of New York, Chapter 23 (“Real Property Transfer Tax”). New York City’s Department of Finance’s Legal Affairs Division posts redacted Letter Rulings at [http://www.nyc.gov/html/dof/html/pub/pub\\_guidance\\_lett rulings\\_rptt.shtml](http://www.nyc.gov/html/dof/html/pub/pub_guidance_lett rulings_rptt.shtml).

### C. Other Transfer Taxes

1. Broome County – \$.50 for each \$500 of consideration of fractional part thereof, payable by the grantor
2. Columbia County – \$1.00 for each \$500 of consideration or part thereof, payable by the grantor. For a one-family residence the first \$150,000 is exempt
3. Erie County - \$2.50 for each \$500 of consideration of fractional part thereof, payable by the grantor
4. Essex County - \$1.00 for each \$500 of consideration or fractional part thereof payable by the grantor

5. Mount Vernon – 1% of consideration in excess of \$100,000, payable by the grantor
6. Peconic Bay Region (Suffolk County) – 2% of consideration, when consideration exceeds \$500, payable by the grantee. For property in Shelter Island, South Hampton and East Hampton, there is an exemption of \$250,000 of consideration for improved property and \$100,000 of consideration for unimproved property. For property in Southold and Riverhead, there is an exemption of \$150,000 of consideration for improved property and \$75,000 of consideration for unimproved property.
7. City of Peekskill – 1% of consideration, payable by the grantor
8. Town of Red Hook (Community Preservation Fund) – 2% of consideration, payable by the grantee

Chapter 596 of the Laws of 2006, the “Hudson Valley Community Preservation Act of 2007” effective January 1, 2008 authorizes Towns and Cities within the Counties of Putnam and Westchester to establish Community Preservation Funds. To provide a source of revenue for such Funds, the Act added Article 33-B (“Tax on Real Estate Transfers in Towns”) to the Tax Law, authorizing each Town and Cities in those Counties to enact, subject to approval by referendum at a November general election, a Local Law imposing a transfer tax of up to 2% of consideration on the conveyance of real property in such Town or City or an interest therein when the consideration exceeds \$500. Among the exemption to be applied is “[a]n exemption from the tax which is equal to the median sales price of residential real property within the applicable town or city, as determined by the Office of Real Property Services pursuant to Section 425 of the Real Property Tax Law..”

9. Tompkins County – \$1.00 for each \$500 of consideration or fractional part thereof, payable by the grantor.
10. Town of Warwick (Community Preservation Fund) Real Estate Transfer Tax - .075% of consideration, when consideration exceeds \$500, payable by the grantor. On the conveyance of improved real property or an interest therein, the first \$100,000 of consideration is exempt. On the conveyance of unimproved real property, the first \$50,000 of consideration is exempt.
11. City of Yonkers – 1.5% of consideration when consideration is in excess of \$25,000, payable by the grantor.

**Note: The balance of this outline applies to the RETT and the RPTT**

## II. CONSIDERATION

### A. Generally

1. **RETT (20 NYCRR Section 575.1(d)(1))** – “Consideration means the price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It includes the cancelation or discharge of an indebtedness or obligation. It also includes the amount of any mortgage, purchase money mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.”
2. **RPTT (19 RCNY Section 23-02)** – “The price actually paid or required to be paid for real property or an economic interest therein, without deduction for mortgages, liens or encumbrances, whether or not expressed in the deed or instrument and whether paid or required to be paid by money, property or any other thing of value. The term includes the cancelation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, lien or other encumbrance, whether or not the underlying indebtedness is assumed. Where an option to purchase real property or an economic interest therein is exercised, consideration shall include the amount paid or required to be paid to the grantor or his designee for the option.”

### B. Continuing Lien Deduction

1. **RETT (20 NYCRR Section 575.1(d)(1))** – “Consideration does not include the amount of any lien or encumbrance remaining thereon at the time of sale where the conveyance involves a 1-3 family house or individual residential condominium unit or where the consideration for the conveyance is less than \$500,000.”
2. **RPTT (19 RCNY Section 23-03(k))** – “In the case of a deed, instrument or transaction conveying or transferring on or after August 28, 1997, a 1-3 family house, an individual residential condominium unit, or an individual residential cooperative apartment, or an economic interest in any such property, the consideration for the conveyance or transfer shall not include the amount of any excludible lien on the property conveyed or interest transferred...to the extent otherwise included in the consideration for the conveyance or transfer.”
  - a. **Excludible lien** – “a mortgage lien, or other encumbrance that was placed on the real property or economic interest before the delivery of the deed or the transfer and [which] remains thereon after the date of the delivery of the deed or the transfer, unless any of the following applies:”
    - (i) “The mortgage, lien or other encumbrance was originally placed on the real property or interest therein in connection with, or in anticipation of, the conveyance or transfer, or was increased in amount in connection with, or in anticipation of, the conveyance or transfer, to the extent of that increase in amount...”

**Note: This includes a mortgage, lien or other encumbrance placed on the property within six months prior to the date of the conveyance or transfer.**

- (ii) “The mortgage, lien or other encumbrance was placed on the real property or interest therein by reason of deferred payments of the purchase price whether represented by notes or otherwise...”**
- (iii) “The mortgage, lien or other encumbrance is discharged, canceled or reduced in amount, to the extent of the reduction in amount, in connection with the conveyance or transfer following delivery of the deed or transfer...”**

**Note: This includes the discharge, cancellation or reduction in amount of a mortgage, lien or other encumbrance within three months following the date of the conveyance or transfer.**

- (iv) “The terms of the mortgage, lien or other encumbrance are materially altered in connection with, or in anticipation of, the conveyance or transfer”.**

**“The terms of a mortgage, lien, or other encumbrance on the property or interest therein will be considered to be materially altered...if within six months prior to, or within three months following, the conveyance or transfer (a) the identity of the mortgagee or holder of the lien or encumbrance has changed, and (b) there has been a change of 10% or more in the interest rate or repayment term...and the facts and circumstances indicate that the alteration is in connection with, or in anticipation of, the conveyance or transfer” (Underlining added)**

**The “material alteration” rules does not apply to a conveyance or transfer between spouses pursuant to a separation agreement or a divorce decree, or to a conveyance or transfer which is a bona fide gift.**

**See Berey, “Applying the Continuing Lien Exclusion to Consideration”, NYLJ February 14, 2001, posted at:**

**<http://www.firstamny.com/group.aspx?id=133>.**

### **C. Controlling interests**

- 1. RETT (20 NYCRR Section 575.1(d)(4) – “In the case of the transfer or acquisition of a controlling interest in any entity that owns real property, consideration means the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.”**

2. RPTT (19 RCNY Section 23-02) – “[A] proportionate share of the amount of any mortgage on the real property must be added to the amount paid” for the controlling interest.

“When the entity whose stock or ownership interest is being transferred owns other assets in addition to real property, only the consideration attributable to the real property is subject to tax...[A]n apportionment.. made in good faith, will be accepted by the Department [of Finance].”

“If no apportionment of the consideration...has been made, or if, in the opinion of the Commissioner of Finance, the apportionment of the consideration does not represent an apportionment made in good faith, then the consideration for the real property (or interest therein) shall be calculated by multiplying total consideration by the following ratio:”

“Fair market value of the real property (or interest therein) owned by the entity...[divided by the] “Fair market value of all assets owned by the entity, including the real property (or interest therein).”

#### D. Cooperative Units

1. RETT (20 NYCRR Section 575.1 (d)(6) – “In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof...in connection with the grant or transfer of a proprietary lease for a cooperative unit other than an individual residential unit, consideration includes a proportionate share of the unpaid principal of the mortgage on the real property of the cooperative housing corporation...”

#### E. Deeds in lieu of Foreclosure

1. RETT (20 NYCRR Section 575.11(a)(2) – Consideration is the sum of the (a) unpaid mortgage balance, (b) the amount of any other liens and encumbrances on the property, and (c) any other amounts paid by the grantee. If, however, the debt owed to the lender is recourse only and the fair market value of the property is less than consideration computed under that formula, consideration is the fair market value of the property.

“[A] debt is recourse debt to the extent that, as of the date of the conveyance, the grantor or a person related to the grantor including any guarantor, bears the economic risk of loss for the debt beyond any loss attributable to the value of the property securing the debt.”

“Debt that was originally nonrecourse and which was converted to recourse debt will be treated as recourse debt provided that the conversion to recourse debt and the conveyance of the real property are not, in substance, integrated steps or part of a plan to decrease the consideration for the conveyance so as to decrease the tax for the conveyance.”

2. **RPTT (19 RCNY Section 23-03)** – “The tax is computed on the amount of the outstanding mortgage debt and unpaid accrued interest.” Consideration also includes the amount due on any other mortgages or any other liens or encumbrances on the property, and any amounts paid by the grantee.

**F. “Gross-up” (N.Y. Rules Tit. 19, Section 23-02)**

If the transferee pays the RETT and/or the RPTT, the amount paid is included in consideration. Compute the so-called “tentative” taxes, then add the tentative taxes to consideration and re-compute to arrive at the transfer taxes payable. A “gross-up” consideration can result in an amount that makes a transfer subject to the Mansion Tax.

**G. Leaseholds**

**1. RETT (20 NYCRR Section 575.7)**

a. A lease or a sublease, when the lessee or sublessee does not have an option to purchase, is a taxable lease when (a) the sum of the term of the lease/sublease and any options for renewal exceeds 49 years; (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee; and (c) the lease/sublease is for substantially all of the premises constituting the real property.

b. For a taxable lease/sublease, consideration is the present value of the right to receive rental payments or other payments attributable to the use and occupancy of the real property during the term of the lease including all renewal terms. In determining the present value of such payments, apply to net rents a discount rate equal to 110% of the federal long-term rate in effect 30 days prior to the date of the transfer compounded semi-annually.

c. For a lease/sublease with a term of less than 49 years, when the lessee or sublessee has an option to purchase, consideration is the present value of the net rental payments for the period in which the option is exercisable, plus the consideration paid for the option to purchase.

d. For an assignment of a lease/sublease, consideration is the amount paid to the assignor; for the surrender of a lease/sublease, consideration is the amount paid to the lessee/sublessee.

**2. RPTT (19 RCNY Section 23-03)**

RPTT applies to the grant, assignment of surrender or a lease or a sublease. However, “the amount subject to tax in the case of a grant of a leasehold interest shall be only such amount as is not considered rent for purposes of the New York City Commercial Rent of Occupancy Tax (Chapter 7 of Title 11 of the Administrative Code).”

## H. Marital Rights

1. **RETT (20 NYCRR Section 575.11(a)(10))** – “A conveyance from one spouse to the other pursuant to the terms of a divorce or separation agreement is subject to tax. (There is a rebuttable presumption in such case, that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in real property conveyed).”
2. **RPTT (19 RCNY Section 23-03)** – “In the absence of evidence establishing the consideration [in a conveyance between spouses pursuant to the terms of a separation agreement’], it is presumed that the consideration for the conveyance, which includes the relinquishment of marital rights, is equal to the fair market value of the interest in the property conveyed.”

## I. Mezzanine Loan Enforcement under UCC Article 9 (Controlling Interests):

1. **RETT (20 NYCRR Section 575.11(a)(16))** – When the successful bidder is not the secured party, is agent, nominee or its wholly owned entity, consideration is the (a) amount of the bid, (b) unpaid balance of any remaining senior mezzanine loans, (c) unpaid balance of any remaining fee mortgage, and the (d) unpaid balance of any other liens on the mezzanine interest being foreclosed. When the successful bidder is the secured party, its agent, nominee or wholly owned entity, consideration is the lesser of the (a) fair market value of the property, without regard to whether or not the debt is recourse or non-recourse, and (b) “a reasonable apportionment to the interests in real property owned by the entity” of the (a) unpaid balance of the debt, (b) other debt of the mezzanine borrower, (c) other liens on the mezzanine interest, (d) liens on the fee estate, including the balance due on any fee mortgages, (e) any other debt owed by the entity, and any other amounts paid by the grantee (not including transfer taxes paid by the grantee).
2. **RPTT** – Consideration is the (a) amount of the bid (the outstanding indebtedness if a transfer in lieu), (b) unpaid balance of any remaining senior mezzanine loans, (c) unpaid balance of any fee mortgage, and the (d) unpaid balance of any other liens on the mezzanine interest.

See Zizzo, Neuman and Berey, “Transfer Taxes Due on the Enforcement of Mezzanine Loans”, NYLJ June 27, 2009, posted at:

<http://www.firstamny.com/group.aspx?id=133>

## J. Mortgage Foreclosures

1. **RETT (20 NYCRR Section 575.11(a)(3))** – When the grantee of the Referee’s Deed is unrelated to the mortgagor, consideration is the sum of the (a) amount of the bid and (b) the amount of any liens and encumbrances remaining on the property. When the grantee is the foreclosing mortgagee, its agent, nominee or its wholly owned entity and the debt is non-recourse, consideration is the greater of (a) the amount of the bid and (b) the amount of any liens and encumbrances remaining on the property, or (a) the amount of the judgment of foreclosure and (b) the amount of any liens and encumbrances remaining on the property.



When the grantee is the foreclosing mortgagee, its nominee or an affiliated entity, and the debt is recourse only, consideration is limited to the fair market value of the property at the time of the conveyance, if less than the amount otherwise computed.

2. RPTT (19 RCNY Section 23-03) – “The tax is computed on the amount bid for the property, senior liens not canceled by the sale, and advertising expenses, taxes and other costs paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor, or other person.”

### III. EXEMPTIONS

#### A. RETT (Tax Law Section 1405 and 20 NYCRR Section 575.9)

1. The following as transferors are exempt, but the transferee pays the RETT:

- a. State of New York, or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada); and

- b. United Nations, the United States of America and any of its agencies or instrumentalities.

2. The following conveyances are not taxable:

- a. Conveyances to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada);

- b. Conveyances to secure a debt or other obligation.

Note: Such a conveyance may be subject to mortgage recording tax.

- c. Conveyances which, without additional consideration, confirm, correct, modify or supplement a prior conveyance;

- d. Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances of realty as bona fide gifts;

Note: The outstanding amount of a mortgage will be included in consideration, even when the transfer is a gift. However, in certain instances, the mortgage amount may be deducted as a “continuing lien” when computing taxable consideration.

- e. Conveyances in connection with a tax sale;

- f. Conveyances effecting a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings;
- g. Conveyances consisting of a deed of partition;
- h. Conveyances pursuant to the federal bankruptcy act;
- i. Conveyances consisting of the execution of a contract to sell real property without use or occupancy or the grant of an option to purchase real property without use or occupancy; and
- j. Conveyances of an option of contract to purchase real property with use or occupancy where the consideration is less than \$250,000 and such property was used solely by the grantor as his personal residence and consists of a one-three family house, an individual condominium unit or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual cooperative unit.

**B. RPTT (New York City Code Section 11-2106)**

1. The following transferors are exempt, but the transferee pays the RPTT:
  - a. State of New York, or any of its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement or compact with another state or the Dominion of Canada) or political subdivisions; and
  - b. United States of America, and any of its agencies or instrumentalities, insofar, as they are immune from taxation.
2. The following conveyances are not taxable:
  - a. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to the United Nations or other world-wide international organization of which the United States is a member;
  - b. A deed, instrument or transaction conveying or transferring real property or an economic interest therein by or to any corporation, or association, or trust or community chest or foundation, organized or operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which ensure to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, however, that nothing in this paragraph shall include an organization operated for the primary purpose of carrying on a trade

or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph;

Note: See “Statement of Audit Procedure, Transfers Into and Out of Charitable Organizations”, RPTT-2008-1, February 29, 2008, posted at

<http://home2.nyc.gov/html/dof/html/pdf/08pdf/charitysap2008.pdf>

c. A deed, instrument or transaction conveying or transferring real property or an economic interest therein to any governmental body or person exempt from payment of the tax;

d. A deed or instrument given solely as security for, or a transaction the sole purpose of which is to secure, a debt or obligation or a deed or instrument given, or a transaction entered into, solely for the purpose of returning such security; Note: Such a conveyance may be subject to mortgage recording tax.

e. A deed, instrument or transaction conveying or transferring real property or an economic interest therein from a mere agent, dummy, straw man or conduit to his principal or a deed, instrument or transaction conveying or transferring real property or an economic interest therein from a principal to his agent, dummy, straw man or conduit; and

f. A deed, instrument or transaction conveying or transferring real property or an economic interest therein that effects a mere change of identity or form of ownership or organization to the extent the beneficial ownership of such real property or economic interest therein remains the same, other than a conveyance to a cooperative housing corporation of the land and building(s) comprising the cooperative dwelling(s) (but not including a housing company organized and operating under the Private Housing Finance Law).

Also, as to exemptions from the RPTT, see

[http://home2.nyc.gov/html/dof/html/business/business\\_rec\\_rptt.shtml](http://home2.nyc.gov/html/dof/html/business/business_rec_rptt.shtml)

A deed executed by the Debtor pursuant to a Plan of Reorganization is also exempt. See *Florida Department of Revenue v. Piccadilly Cafeterias, Inc.*, reported at 554 U.S. 33 (2008), holding that under Bankruptcy Code Section 1146(a) an exemption from stamp taxes only applies to a transfer made by a Debtor in bankruptcy under a plan of reorganization.

Note: The outstanding amount of a mortgage will be included in consideration, even when the transfer is a gift. However, in certain instances, the mortgage amount may be deducted as a “continuing lien” when computing taxable consideration. A conveyance pursuant to the terms of a Will or under the laws of intestacy is not transfer taxable.

#### IV. INTEREST AND PENALTIES

##### A. RETT (From Form TP-584-I (“Instructions for Form TP-584”))

1. “Daily compounded interest will be charged on the amount of the tax due [but] not paid within the time required”.

For current interest rates see [http://www.tax.ny.gov/pay/all/int\\_curr.htm](http://www.tax.ny.gov/pay/all/int_curr.htm)

2. “Any grantor or grantee failing to file a return or to pay any tax within the time required shall be subject to a penalty of 10% of the amount of tax due plus an interest penalty of 2% of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or the tax first became due. However, the interest penalty shall not exceed 25% in the aggregate”.

“If the Commissioner of Taxation and Finance determines that such failure or delay was due to reasonable cause and not due to willful neglect, the commissioner shall remit, abate, or waive all of the penalty and the interest penalty”.

##### B. RPTT (From “Instructions” for transfer tax return)

1. “If the tax is not paid on or before the due date (determined without regard to any extension of time), interest must be paid on the amount of the underpayment from the due date to the date paid.”

2. Penalties

“a) If you fail to file a return when due, add to the tax 5% for each month or partial month the form is late up to 25%, unless the failure is due to reasonable cause.”

“b) If you fail to pay the tax shown on the return by the prescribed filing date, add to the tax (less any payments made) ½% for each month or partial month the payment is late up to 25%, unless the failure is due to reasonable cause.”

“c) The total of the additional charges in a) and b) may not exceed 5% for any one month.”

For Interest Rates on Late Filings and Late Payments see  
[http://www.nyc.gov/html/dof/html/business/business\\_tax\\_rate.shtml#interest](http://www.nyc.gov/html/dof/html/business/business_tax_rate.shtml#interest)

Articles can be accessed at [www.firstamny.com](http://www.firstamny.com)

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**MORTGAGE TAX: (LOAN AMOUNT)**

*As of April 1, 2013*

**WESTCHESTER (EXCEPT YONKERS) AND ROCKLAND**

RESIDENTIAL  
**1.30%**

The borrower pays 1.05% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.30%**

The borrower pays the entire amount

**YONKERS**

RESIDENTIAL  
**1.80%**

The borrower pays 1.55% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.80%**

The borrower pays the entire amount

**DUTCHESS, ORANGE, PUTNAM, NASSAU AND SUFFOLK**

RESIDENTIAL  
**1.05%**

The borrower pays .80% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.05%**

The borrower pays the entire amount

**NYC**

RESIDENTIAL\*

**\$499,999.99 and less: 2.05%**

The borrower pays 1.80% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\*\* The lender pays .25%.

**\$500,000.00 and more: 2.175%**

The borrower pays 1.925% minus \$30.00 if the property is 1-2 Family  
 The lender pays .25%.

COMMERCIAL\*\*

**\$499,999.99 and less: 2.05%**

The borrower pays the entire amount.

**\$500,000.00 and more: 2.80%**

The borrower pays the entire amount.

\* Residential properties are defined as 1-3 family dwellings for this section of the law.

\*\* For mortgages less than \$10,000: the mortgage tax is .30% less than the regular applicable rate. A .25% exemption is permitted pursuant to Sec. 253 of the Tax Law for transactions involving 1-6 family dwelling where the lender is a natural person. This exemption does not apply to vacant land.

All mortgages made within a 12 month period are presumed to be related transactions and are therefore aggregated for purposes of determining the mortgage tax rate.

MORTGAGE TAX:

(If \$50.00 or below, drop. If \$50.01 or over, round up to next \$100.00)

Ex: Mortgage amount = 47,750.00 taxed on \$47,700.

Mortgage amount = 47,750.01 taxed on \$47,800.

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**MORTGAGE TAX: (LOAN AMOUNT)**

*As of April 1, 2013*

**WESTCHESTER (EXCEPT YONKERS) AND ROCKLAND**

RESIDENTIAL  
**1.30%**

The borrower pays 1.05% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.30%**

The borrower pays the entire amount

**YONKERS**

RESIDENTIAL  
**1.80%**

The borrower pays 1.55% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.80%**

The borrower pays the entire amount

**DUTCHESS, ORANGE, PUTNAM, NASSAU AND SUFFOLK**

RESIDENTIAL  
**1.05%**

The borrower pays .80% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\* The lender pays .25%.

COMMERCIAL  
**1.05%**

The borrower pays the entire amount

**NYC**

RESIDENTIAL\*

**\$499,999.99 and less: 2.05%**

The borrower pays 1.80% minus \$30.00 if the property is 1-2 Family and the loan is \$10,000 or more.\*\* The lender pays .25%.

**\$500,000.00 and more: 2.175%**

The borrower pays 1.925% minus \$30.00 if the property is 1-2 Family  
 The lender pays .25%.

COMMERCIAL\*\*

**\$499,999.99 and less: 2.05%**

The borrower pays the entire amount.

**\$500,000.00 and more: 2.80%**

The borrower pays the entire amount.

\* Residential properties are defined as 1-3 family dwellings for this section of the law.

\*\* For mortgages less than \$10,000: the mortgage tax is .30% less than the regular applicable rate. A .25% exemption is permitted pursuant to Sec. 253 of the Tax Law for transactions involving 1-6 family dwelling where the lender is a natural person. This exemption does not apply to vacant land.

All mortgages made within a 12 month period are presumed to be related transactions and are therefore aggregated for purposes of determining the mortgage tax rate.

MORTGAGE TAX:

(If \$50.00 or below, drop. If \$50.01 or over, round up to next \$100.00)

Ex: Mortgage amount = 47,750.00 taxed on \$47,700.

Mortgage amount = 47,750.01 taxed on \$47,800.

222 Bloomingdale Road  
White Plains, NY 10605  
(914) 250-2400  
Fax: (914) 422-1550



2 Rector Street  
Suite 901  
New York, NY 10006  
(212) 308-0840

**TRANSFER TAXES: (PURCHASE PRICE)**

**NEW YORK STATE TRANSFER TAX**

*As of April 1, 2013*

RESIDENTIAL  
(including 1,2,3 Family Residential Dwelling, Single Unit Co-op or Single Unit Condo)  
\$2.00 per \$500 of purchase price

COMMERCIAL  
Same as Residential

**REAL PROPERTY TRANSFER TAX** \*Applicable exemption amount is subtracted from the purchase price, then calculate the tax.

A) Yonkers (Westchester County) RESIDENTIAL 1.5% COMMERCIAL Same as Residential

B) Mt. Vernon\* & Peekskill (Westchester County) RESIDENTIAL 1% COMMERCIAL Same as Residential  
Paid by Seller

\*An exemption is allowed on the first \$100,000 of consideration.

C) Peconic Bay Transfer Tax (Suffolk County) RESIDENTIAL 2% (Paid by the Purchaser) COMMERCIAL Same as Residential

Shelter Island, South Hampton and East Hampton: An exemption is allowed on the first \$250,000 for improved property and \$100,000 for unimproved property. Southold and Riverhead: \$150,000 for improved property and \$75,000 for unimproved property. Additional exemption available for qualifying first time homebuyers.

D) New York City and Boroughs RESIDENTIAL 1-3 FAMILY COMMERCIAL  
Kings, Queens & Bronx \$500,000 and less: 1% \$500,000 and less: 1.425%  
\$500,000.01 and more: 1.425% \$500,000.01 and more: 2.625%

E) Town of Red Hook (Dutchess County) RESIDENTIAL 2% (Paid by the Purchaser) COMMERCIAL Same as Residential

An exemption is allowed of an amount equal to the median sales price of residential property in the County of Dutchess. Said median price will be determined each June. The median sales price effective until June of 2008 is \$330,000.00.

F) Town of Warwick (Orange County) RESIDENTIAL .75% (Paid by the Purchaser) COMMERCIAL Same as Residential

An exemption is allowed on the first \$100,000 of consideration for improved property and the first \$50,000 unimproved property.

**MANSION TAX (PURCHASE PRICE OVER \$1,000,000)**

RESIDENTIAL  
1% (Paid by the Purchaser)

COMMERCIAL  
n/a

Payment due date (delivery date is presumed to be date shown on instrument) for the NYC-RPT is 30 days after delivery, the New York State Transfer Tax and Mansion Tax is 15 days after delivery. Penalty for late payment: NYC-RPT is 5% per month up to 25% plus interest, New York State Transfer Tax and Mansion Tax is 10% penalty plus 2% per month or part thereof up to 25%.

222 Bloomingdale Road  
White Plains, NY 10605  
(914) 250-2400  
Fax: (914) 422-1550



2 Rector Street  
Suite 901  
New York, NY 10006  
(212) 308-0840

**TRANSFER TAXES: (PURCHASE PRICE)**

**NEW YORK STATE TRANSFER TAX**

*As of April 1, 2013*

RESIDENTIAL  
(including 1,2,3 Family Residential Dwelling, Single Unit Co-op or Single Unit Condo)  
\$2.00 per \$500 of purchase price

COMMERCIAL  
Same as Residential

**REAL PROPERTY TRANSFER TAX** \*Applicable exemption amount is subtracted from the purchase price, then calculate the tax.

A) Yonkers (Westchester County) RESIDENTIAL 1.5% COMMERCIAL Same as Residential

B) Mt. Vernon\* & Peekskill (Westchester County) RESIDENTIAL 1% COMMERCIAL Same as Residential  
Paid by Seller

\*An exemption is allowed on the first \$100,000 of consideration.

C) Peconic Bay Transfer Tax (Suffolk County) RESIDENTIAL 2% (Paid by the Purchaser) COMMERCIAL Same as Residential

Shelter Island, South Hampton and East Hampton: An exemption is allowed on the first \$250,000 for improved property and \$100,000 for unimproved property. Southold and Riverhead: \$150,000 for improved property and \$75,000 for unimproved property. Additional exemption available for qualifying first time homebuyers.

D) New York City and Boroughs RESIDENTIAL 1-3 FAMILY COMMERCIAL  
Kings, Queens & Bronx \$500,000 and less: 1% \$500,000 and less: 1.425%  
\$500,000.01 and more: 1.425% \$500,000.01 and more: 2.625%

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**MANSION TAX (PURCHASE PRICE OVER \$1,000,000)**

RESIDENTIAL  
1% (Paid by the Purchaser)

COMMERCIAL  
n/a

Payment due date (delivery date is presumed to be date shown on instrument) for the NYC-RPT is 30 days after delivery, the New York State Transfer Tax and Mansion Tax is 15 days after delivery. Penalty for late payment: NYC-RPT is 5% per month up to 25% plus interest, New York State Transfer Tax and Mansion Tax is 10% penalty plus 2% per month or part thereof up to 25%.





# NYC-RPT

## Form and Instructions

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### What's inside?

Form NYC-RPT (Real Property  
Transfer Tax Return).  
Pages ① - ⑪

What is the Tax Rate?  
Page ⑭

Smoke Detector Affidavit  
for one-and two-family  
dwellings. Page ⑫

Who is exempt from  
the transfer tax? Page ⑯

Instructions for  
Form NYC-RPT.  
Pages ⑬ - ⑰

What is the filing fee?  
Page ⑰

Where and when  
do I have to file? Page ⑰

**Use this application only if filing a Property Transfer  
Tax Return for Staten Island. All other boroughs  
must file via ACRIS at [nyc.gov/finance](http://nyc.gov/finance)**



# NYC RPT

## NEW YORK CITY DEPARTMENT OF FINANCE REAL PROPERTY TRANSFER TAX RETURN

(Pursuant to Title 11, Chapter 21, NYC Administrative Code)

**Instructions:** If you are filing this form as part of a Non-Recorded Transfer, mail your completed RPT form to:  
NYC Dept. of Finance, Non-Recorded RPTT Return Processing, 66 John Street, 13th Floor, New York, NY 10038.  
See Instructions on page 17 of this form for further details.

### GRANTOR

Name

Grantor is a(n):  individual  partnership (must complete Schedule 3) Telephone Number \_\_\_\_\_  
(check one)  corporation  other \_\_\_\_\_

Permanent mailing address after transfer (number and street) \_\_\_\_\_

City and State \_\_\_\_\_ Zip Code \_\_\_\_\_

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_ SOCIAL SECURITY NUMBER \_\_\_\_\_  
OR \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

DO NOT WRITE IN THIS SPACE  
FOR OFFICE USE ONLY

RETURN NUMBER ▲

DEED SERIAL NUMBER ▲

NYS REAL ESTATE TRANSFER TAX PAID ▲

### GRANTEE

Name

Grantee is a(n):  individual  partnership (must complete Schedule 3) Telephone Number \_\_\_\_\_  
(check one)  corporation  other \_\_\_\_\_

Permanent mailing address after transfer (number and street) \_\_\_\_\_

City and State \_\_\_\_\_ Zip Code \_\_\_\_\_

EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_ SOCIAL SECURITY NUMBER \_\_\_\_\_  
OR \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

### PROPERTY LOCATION

LIST EACH LOT SEPARATELY. ATTACH A RIDER IF ADDITIONAL SPACE IS REQUIRED

Address (number and street)	Apt. No.	Borough	Block	Lot	# of Floors	Square Feet	Assessed Value of Property

DATE OF TRANSFER TO GRANTEE: \_\_\_\_\_  PERCENTAGE OF INTEREST TRANSFERRED: \_\_\_\_\_ %

### CONDITION OF TRANSFER. See Instructions

- Check (✓) all of the conditions that apply and fill out the appropriate schedules on pages 5-11 of this return. Additionally, Schedules 1 and 2 must be completed for all transfers.
- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>a. <input type="checkbox"/> .....Arms length transfer</li> <li>b. <input type="checkbox"/> .....Transfer in exercise of option to purchase</li> <li>c. <input type="checkbox"/> .....Transfer from cooperative sponsor to cooperative corporation</li> <li>d. <input type="checkbox"/> .....Transfer by referèe or receiver (complete Schedule A, page 5)</li> <li>e. <input type="checkbox"/> .....Transfer pursuant to marital settlement agreement or divorce decree (complete Schedule I, page 9)</li> <li>f. <input type="checkbox"/> .....Deed in lieu of foreclosure (complete Schedule C, page 6)</li> <li>g. <input type="checkbox"/> .....Transfer pursuant to liquidation of an entity (complete Schedule D, page 6)</li> <li>h. <input type="checkbox"/> .....Transfer from principal to agent, dummy, strawman or conduit or vice-versa (complete Schedule E, page 7)</li> <li>i. <input type="checkbox"/> .....Transfer pursuant to trust agreement or will (attach a copy of trust agreement or will)</li> <li>j. <input type="checkbox"/> .....Gift transfer not subject to indebtedness</li> <li>k. <input type="checkbox"/> .....Gift transfer subject to indebtedness</li> <li>l. <input type="checkbox"/> .....Transfer to a business entity in exchange for an interest in the business entity (complete Schedule F, page 7)</li> </ul> | <ul style="list-style-type: none"> <li>m. <input type="checkbox"/> .....Transfer to a governmental body</li> <li>n. <input type="checkbox"/> .....Correction deed</li> <li>o. <input type="checkbox"/> .....Transfer by or to a tax exempt organization (complete Schedule G, page 8).</li> <li>p. <input type="checkbox"/> .....Transfer of property partly within and partly without NYC</li> <li>q. <input type="checkbox"/> .....Transfer of successful bid pursuant to foreclosure</li> <li>r. <input type="checkbox"/> .....Transfer by borrower solely as security for a debt or a transfer by lender solely to return such security</li> <li>s. <input type="checkbox"/> .....Transfer wholly or partly exempt as a mere change of identity or form of ownership. Complete Schedule M, page 9)</li> <li>t. <input type="checkbox"/> .....Transfer to a REIT or to a corporation or partnership controlled by a REIT. (Complete Schedule R, pages 10 and 11)</li> <li>u. <input type="checkbox"/> .....Other transfer in connection with financing (describe): _____</li> <li>v. <input type="checkbox"/> .....Other (describe): _____</li> </ul> |
|---|--|



● TYPE OF PROPERTY (✓)	● TYPE OF INTEREST (✓)																				
<ul style="list-style-type: none"> <li>a. <input type="checkbox"/> ..... 1-3 family house</li> <li>b. <input type="checkbox"/> ..... Individual residential condominium unit</li> <li>c. <input type="checkbox"/> ..... Individual cooperative apartment</li> <li>d. <input type="checkbox"/> ..... Commercial condominium unit</li> <li>e. <input type="checkbox"/> ..... Commercial cooperative</li> <li>f. <input type="checkbox"/> ..... Apartment building</li> <li>g. <input type="checkbox"/> ..... Office building</li> <li>h. <input type="checkbox"/> ..... Industrial building</li> <li>i. <input type="checkbox"/> ..... Utility</li> <li>j. <input type="checkbox"/> ..... OTHER. (describe): _____</li> </ul>	<p>Check box at LEFT if you intend to record a document related to this transfer. Check box at RIGHT if you do not intend to record a document related to this transfer.</p> <table style="width:100%; border-collapse: collapse;"> <tr> <th style="width:50%; text-align: left;">REC.</th> <th style="width:50%; text-align: left;">NON REC.</th> </tr> <tr> <td>a. <input type="checkbox"/> ..... Fee .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>b. <input type="checkbox"/> ..... Leasehold Grant .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>c. <input type="checkbox"/> ..... Leasehold Assignment or Surrender .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>d. <input type="checkbox"/> ..... Easement .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>e. <input type="checkbox"/> ..... Subterranean Rights .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>f. <input type="checkbox"/> ..... Development Rights .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>g. <input type="checkbox"/> ..... Stock .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>h. <input type="checkbox"/> ..... Partnership Interest .....</td> <td><input type="checkbox"/></td> </tr> <tr> <td>i. <input type="checkbox"/> ..... OTHER. (describe): .....</td> <td><input type="checkbox"/></td> </tr> </table>	REC.	NON REC.	a. <input type="checkbox"/> ..... Fee .....	<input type="checkbox"/>	b. <input type="checkbox"/> ..... Leasehold Grant .....	<input type="checkbox"/>	c. <input type="checkbox"/> ..... Leasehold Assignment or Surrender .....	<input type="checkbox"/>	d. <input type="checkbox"/> ..... Easement .....	<input type="checkbox"/>	e. <input type="checkbox"/> ..... Subterranean Rights .....	<input type="checkbox"/>	f. <input type="checkbox"/> ..... Development Rights .....	<input type="checkbox"/>	g. <input type="checkbox"/> ..... Stock .....	<input type="checkbox"/>	h. <input type="checkbox"/> ..... Partnership Interest .....	<input type="checkbox"/>	i. <input type="checkbox"/> ..... OTHER. (describe): .....	<input type="checkbox"/>
REC.	NON REC.																				
a. <input type="checkbox"/> ..... Fee .....	<input type="checkbox"/>																				
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h. <input type="checkbox"/> ..... Partnership Interest .....	<input type="checkbox"/>																				
i. <input type="checkbox"/> ..... OTHER. (describe): .....	<input type="checkbox"/>																				

**SCHEDULE 1 - DETAILS OF CONSIDERATION**

COMPLETE THIS SCHEDULE FOR ALL TRANSFERS AFTER COMPLETING THE APPROPRIATE SCHEDULES ON PAGES 5 THROUGH 11. ENTER "ZERO" ON LINE 11 IF THE TRANSFER REPORTED WAS WITHOUT CONSIDERATION.

1. Cash.....●	1.		
2. Purchase money mortgage.....●	2.		
3. Unpaid principal of pre-existing mortgage(s).....●	3.		
4. Accrued interest on pre-existing mortgage(s).....●	4.		
5. Accrued real estate taxes.....●	5.		
6. Amounts of other liens on property.....●	6.		
7. Value of shares of stock or of partnership interest received.....●	7.		
8. Value of real or personal property received in exchange.....●	8.		
9. Amount of Real Property Transfer Tax and/or other taxes or expenses of the grantor which are paid by the grantee.....●	9.		
10. Other (describe):.....●	10.		
11. <b>TOTAL CONSIDERATION</b> (add lines 1 through 10 - must equal amount entered on line 1 of Schedule 2) (see instructions).....●	11.	\$	

**See instructions for special rules relating to transfers of cooperative units, liquidations, marital settlements and transfers of property to a business entity in return for an interest in the entity.**

**SCHEDULE 2 - COMPUTATION OF TAX**

A. Payment	Pay amount shown on line 12 - See Instructions	Payment Enclosed	
1.	Total Consideration (from line 11, above).....●	1.	
2.	Excludable liens (see instructions).....●	2.	
3.	Consideration (Line 1 less line 2).....●	3.	
4.	Tax Rate (see instructions).....●	4.	%
5.	Percentage change in beneficial ownership (see instructions).....●	5.	%
6.	Taxable consideration (multiply line 3 by line 5).....●	6.	
7.	Tax (multiply line 6 by line 4).....●	7.	
8.	Credit (see instructions).....●	8.	
9.	Tax due (line 7 less line 8) (if the result is negative, enter zero).....●	9.	
10.	Interest (see instructions).....●	10.	
11.	Penalty (see instructions).....●	11.	
12.	<b>Total Tax Due</b> (add lines 9, 10 and 11).....●	12.	\$

**SCHEDULE 3 - TRANSFERS INVOLVING MULTIPLE GRANTORS AND/OR GRANTEES OR A PARTNERSHIP**

**NOTE** If additional space is needed, attach copies of this schedule or an addendum listing all of the information required below.

**GRANTOR(S)/PARTNER(S)**

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

**GRANTEE(S)/PARTNER(S)**

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
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OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

NAME \_\_\_\_\_

PERMANENT MAILING ADDRESS AFTER TRANSFER (NUMBER AND STREET) \_\_\_\_\_

CITY AND STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

SOCIAL SECURITY NUMBER  
 -  -

OR

EMPLOYER IDENTIFICATION NUMBER  
 -

GRANTOR'S ATTORNEY					
Name of Attorney			Telephone Number (     )		
Address (number and street)		City and State		Zip Code	
EMPLOYER IDENTIFICATION NUMBER		-		<b>OR</b>	SOCIAL SECURITY NUMBER

GRANTEE'S ATTORNEY					
Name of Attorney			Telephone Number (     )		
Address (number and street)		City and State		Zip Code	
EMPLOYER IDENTIFICATION NUMBER		-		<b>OR</b>	SOCIAL SECURITY NUMBER

CERTIFICATION			
<p>I swear or affirm that this return, including any accompanying schedules, affidavits and attachments, has been examined by me and is, to the best of my knowledge, a true and complete return made in good faith, pursuant to Title 11, Chapter 21 of the Administrative Code and the regulations issued thereunder.</p>			
<p><b>GRANTOR</b></p> <p>Sworn to and subscribed to</p> <p>before me on this _____ day</p> <p>of _____,</p> <p>Signature of Notary</p>	<p><b>GRANTEE</b></p> <p>Sworn to and subscribed to</p> <p>before me on this _____ day</p> <p>of _____,</p> <p>Signature of Notary</p>	<p>EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER</p> <hr/> <p>Name of Grantor</p> <hr/> <p>Signature of Grantor</p>	<p>EMPLOYER IDENTIFICATION NUMBER OR SOCIAL SECURITY NUMBER</p> <hr/> <p>Name of Grantee</p> <hr/> <p>Signature of Grantee</p>
<div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin: 0 auto;"> <div style="text-align: center; font-size: 8px;">                     Notary's stamp or seal                 </div> </div>	<div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin: 0 auto;"> <div style="text-align: center; font-size: 8px;">                     Notary's stamp or seal                 </div> </div>	<p><b>GRANTEE:</b> To ensure that your property and water/sewer tax bills are sent to the proper address, please visit the Finance website at <a href="http://nyc.gov/finance">nyc.gov/finance</a>. If you do not have internet access, call 311.</p>	

**SCHEDULE A - TRANSFER BY REFEREE OR RECEIVER**

**NOTE** The consideration for a transfer by a referee or receiver under foreclosure or execution is the amount bid for the property or economic interest therein and the costs paid by the purchaser, plus the amount of any pre-existing mortgages, liens or other encumbrances remaining on the property after the transfer, whether or not the underlying indebtedness is assumed.

1. Was this transfer the result of a court ordered sale pursuant to foreclosure or execution? (✓) .....  YES  NO  
 If "yes," complete lines 2a through 2f below. If "no," complete line 3 below.

2a. Status of grantee: (✓)  
 Nominee of plaintiff  Plaintiff in foreclosure action  Assignee of plaintiff  Transferee of successful bidder  
 Other (describe): \_\_\_\_\_

2b. Priority of mortgage foreclosed upon:  first  second  third or other

2c. Amount of foreclosure judgment .....2c. \$ \_\_\_\_\_

2d. Price bid by grantee (enter here and on Schedule 1. See instructions) .....2d.

\$	
----	--

2e. Costs paid by grantee (enter here and on line 10, Schedule 1) .....2e.

\$	
----	--

2f. Amount of remaining mortgages, liens or other encumbrances (enter here and on Schedule 1. See instructions) .....2f.

\$	
----	--

3. If the answer to line 1 above is "no", state the reason for this transfer: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SCHEDULE B - TRANSFER OF SHARES OF STOCK IN A COOPERATIVE HOUSING CORPORATION**

A. Name and address of cooperative housing corporation: \_\_\_\_\_  
 \_\_\_\_\_ Zip Code: \_\_\_\_\_

B. 1) Is this an initial transfer of shares from either a cooperative housing corporation or a sponsor? (✓)  YES  NO

2) If "yes," enter the date the NYC Real Property Transfer Tax was paid on the transfer of land and/or building to the cooperative housing corporation .....  
 MONTH DAY YEAR

If this initial transfer is more than 2 years from the above date, enter the date the first of these initial transfers was made .....  
 MONTH DAY YEAR

C. Is this a transfer of an individual unit in a housing company organized and operating pursuant to the provisions of articles two, four, five, or eleven of the Private Housing Finance Law? (✓)  YES  NO

If "yes," you are not subject to the Real Property Transfer Tax. However, you must file a return.

**NOTE** If you answered "yes," to question B above, you may be entitled to a credit. Complete lines 1 through 4 below. If you answered "no," to question B above, you are not entitled to a credit.

**CREDIT CALCULATION**

1. Enter the amount of NYC Real Property Transfer Tax paid on conveyance of underlying real property to cooperative housing corporation .....1.

\$	
----	--

2. Enter the number of shares transferred in this transaction .....2.

--	--

3. Enter the total number of outstanding shares of the cooperative housing corporation including any shares held by the corporation .....3.

--	--

4. Amount of credit (divide line 2 by line 3 and multiply the result by line 1. Enter here and on line 8, Schedule 2) .....4.

\$	
----	--

**SCHEDULE C - TRANSFER IN LIEU OF FORECLOSURE**

**NOTE** A conveyance by a defaulting mortgagor to the mortgagee (or to a nominee or assignee of the mortgagee) in consideration of the cancellation of the mortgage debt is taxable. The consideration is the amount of the outstanding mortgage debt and unpaid accrued interest, plus the amount of any other mortgages, liens or encumbrances remaining on the property or economic interest or the underlying real property after the transfer, whether or not the underlying indebtedness is assumed and irrespective of whether the cancellation of the mortgage was recorded.

1. Status of grantee: (✓)

- Mortgagee                     
  Nominee of mortgagee                     
  Assignee of mortgagee  
 Other (describe): \_\_\_\_\_

2. Priority of mortgage in default:     first                     
  second                     
  third or other

3. Amount of debt owed by grantor to mortgagee at time of transfer:

- a. Outstanding principal (enter here and on line 3 of Schedule 1) .....3a.  
 b. Accrued interest (enter here and on line 4 of Schedule 1) .....3b.

\$	
\$	
\$	

4. Amount of mortgages, liens or other encumbrances remaining on the real property or economic interest therein after the transfer (enter here and on Schedule 1. See instructions).....4.

\$	
----	--

**SCHEDULE D - TRANSFER PURSUANT TO PARTIAL OR COMPLETE LIQUIDATION OF CORPORATION, PARTNERSHIP OR OTHER ENTITY**

SEE INSTRUCTIONS AND SCHEDULE M.

**NOTE** A distribution of real property or an economic interest therein within 12 months of liquidation of the distributing entity is presumed to be a distribution in liquidation. *Attach a balance sheet reflecting the grantor's assets and liabilities at the time of the liquidation.*

**COMPUTATION OF TAX BASE**

1. Fair market value of real property or economic interest therein at the time of liquidation .....1.  
 2. Amount of mortgages or other liens or encumbrances on real property or economic interest therein.....2.  
 3. Tax base: Compare line 1 and line 2, enter the greater of the two here and on line 11, Schedule 1 .....3.

\$	
\$	
\$	

IF, PURSUANT TO THE INSTRUCTIONS, YOU ARE FILING MORE THAN ONE SCHEDULE D, IDENTIFY THE PROPERTY THAT THIS SCHEDULE D REFERS TO.

BOROUGH	BLOCK	LOT	ADDRESS	FAIR MARKET VALUE

**SCHEDULE E - TRANSFER BY OR TO AN AGENT, DUMMY, STRAWMAN OR CONDUIT**

**NOTE** A transfer from an agent, dummy, strawman or conduit to a principal or from a principal to an agent, dummy, strawman or conduit is exempt from the Real Property Transfer Tax. Complete questions 1 through 8 below to establish the claim of exemption.

1. Name and address of party from whom the property or economic interest was acquired by grantor.  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
NUMBER AND STREET CITY STATE ZIP CODE

2. Date of acquisition: [ ] [ ] [ ] [ ] [ ] [ ]

3. Is this conveyance either a transfer from an agent to a principal or from a principal to an agent? (✓) .....  YES  NO  
 If "yes," attach a copy of agency agreement or affidavit of explanation.

4. Amount of Real Property Transfer Tax paid upon acquisition by grantor..... [ ] [ ] [ ] [ ]

5. Is this transfer part of a transfer to and from a corporation for the sole purpose of acquiring mortgage financing? (✓).  YES  NO

6. Is this transfer to a dummy, strawman, or conduit from a principal or vice versa? (✓) .....  YES  NO

7. If this is a transfer to an agent, dummy, strawman, or conduit, is the grantee actively engaged in a business? (✓).....  YES  NO

8. If the answers to questions 3, 5, 6 and 7 above are all "no," describe the relationship of the grantor and the grantee and the purpose of the transfer:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SCHEDULE F - TRANSFER TO BUSINESS ENTITY IN RETURN FOR AN INTEREST IN THE BUSINESS ENTITY**

SEE SCHEDULE M AND INSTRUCTIONS.

**NOTE** A transfer of property or an economic interest therein to a corporation in exchange for shares of its capital stock may be taxable, even where there is no simultaneous exchange of shares of stock for the real property or economic interest therein, if the transfer is part of a plan to form a corporation for the purpose of holding the property or economic interest therein. A transfer to a partnership as a contribution of partnership assets may be similarly taxable.

1. Relationship of grantee to grantor(s) immediately after the transfer: (✓)

Corporation wholly owned by grantor(s)  Partnership consisting wholly of grantor(s)  
 Corporation owned by grantor(s) and other(s)  Partnership consisting of grantor(s) and other(s)  
 Other (describe): \_\_\_\_\_

2. If this transfer has more than one grantor, state the percentage of interest transferred by each grantor. (If the grantor is a partnership or limited partnership, state the percentage of interest transferred by each individual partner or limited partner.)

Name of Grantor/Partnership	Percentage of interest
_____	_____ %
_____	_____ %
_____	_____ %

3. Date of formation of grantee business .....	3.	[ ] [ ] [ ] [ ] [ ] [ ]
4. Fair market value of the real property or economic interest therein at time of transfer .....	4.	\$ [ ] [ ] [ ] [ ] [ ] [ ]
5. Basis used for depreciation of the real property on federal tax return by the grantor before this transfer .....	5.	[ ] [ ] [ ] [ ] [ ] [ ]
6. Basis to be used for depreciation of the real property on federal tax return by the grantee after this transfer .....	6.	[ ] [ ] [ ] [ ] [ ] [ ]
7. Amount of mortgages, liens or encumbrances on the real property transferred .....	7.	\$ [ ] [ ] [ ] [ ] [ ] [ ]
8. Other consideration received from the business entity (attach schedule).....	8.	\$ [ ] [ ] [ ] [ ] [ ] [ ]
9. Value of shares of stock or partnership interest received in exchange for the real property or interest therein (line 4 less the sum of lines 7 and 8) (enter here and on line 7, Schedule 1).....	9.	\$ [ ] [ ] [ ] [ ] [ ] [ ]

**SCHEDULE G - TRANSFER BY OR TO A TAX EXEMPT ORGANIZATION**

NONPROFIT ORGANIZATIONS PLEASE REFER TO THE INSTRUCTIONS "EXEMPTIONS FROM THE TRANSFER TAX"

**NOTE**

A transfer by or to an eligible tax exempt organization is exempt from the Real Property Transfer Tax. To be eligible, an organization must be operated exclusively for religious, charitable or educational purposes and must provide proof of the organization's tax exempt status. If claiming tax exempt status, please answer questions 1 and 2. Additionally, the organization must provide copies of any letters granting an IRS or New York State sales tax exemption or New York City exemption and ATTACH AN AFFIDAVIT stating whether such an exemption remains in effect.

1. Is the grantor or grantee an organization exempt from taxation pursuant to IRS Code Section 501(c)(3)? (✓).....  YES  NO  
If "yes", attach a copy of the letter from the U. S. Treasury Department granting the exemption.
2. Has the grantor or grantee received an exemption from sales tax from the NYS Department of Taxation and Finance? (✓)...  YES  NO  
If "yes", attach a copy of the letter from the NYS Department of Taxation and Finance granting the exemption.

**SCHEDULE H - TRANSFER OF CONTROLLING ECONOMIC INTEREST**

A. Indicate name, address and Employer Identification Number (EIN) of entity with respect to which a controlling economic interest has been transferred:

Name : \_\_\_\_\_

Address: \_\_\_\_\_  
NUMBER AND STREET CITY STATE ZIP CODE

Employer Identification Number:  -

**NOTE**

If the real property that is the subject of this transfer is owned by an entity other than the entity listed above, check (✓) the box and attach a schedule listing the name, address and Employer Identification Number of the entity. ....

B. Total percentage of economic interest transferred in this transaction .....	B.	<input type="text"/>	%
C. Total percentage of economic interest transferred by this grantor(s) or others in related transfers or pursuant to plan (including this transaction) .....	C.	<input type="text"/>	%
D. Total percentage of economic interest transferred by this grantor(s) or others within the preceding three years (including this transaction) .....	D.	<input type="text"/>	%
E. Total percentage of economic interest acquired by this grantee(s) or others in related transfers or pursuant to plan (including this transaction) .....	E.	<input type="text"/>	%
F. Total percentage of economic interest acquired by this grantee(s) or others within the preceding three years (including this transaction) .....	F.	<input type="text"/>	%

**NOTE**

If any of the above percentages is 50% or more, complete lines 1 and 2 below and Schedules 1 and 2. Attach a rider explaining apportionment of consideration.

**COMPUTATION OF CONSIDERATION**

1. Total consideration for this transfer .....	1.	\$	<input type="text"/>	<input type="text"/>
2. Amount apportioned to item of NYC real property or interest therein (see instructions) .....	2.	\$	<input type="text"/>	<input type="text"/>

**SCHEDULE I - TRANSFERS PURSUANT TO A SEPARATION AGREEMENT, MARITAL SETTLEMENT AGREEMENT OR DIVORCE DECREE**

**NOTE** The consideration for a transfer pursuant to a separation agreement, marital settlement agreement or divorce decree includes the value of any marital rights exchanged for the property or economic interest as well as any other types of consideration paid by the grantee for the transfer. The consideration will be presumed to be equal to the fair market value of the portion of the property or interest transferred, unless you establish the consideration to be a different amount.

1. What was the fair market value of property at the time of transfer? ..... \$ \_\_\_\_\_
2. Is the property a 1, 2 or 3 family house, residential condominium or residential cooperative apartment? ..  YES  NO  
 If yes, was there a mortgage on the property at the time of transfer? .....  YES  NO  
 If yes, what was the balance due? (Enter also on Schedule 2, line 2) ..... \$ \_\_\_\_\_
3. What was the Grantor's percentage of ownership at the time of the transfer? ..... \_\_\_\_\_ %  
 If the transfer was between husband and wife jointly as Grantor and either husband or wife individually as Grantee it is presumed that the percentage of ownership transferred will be 50% unless the deed specifies another percentage.
4. **Rebuttable Presumption of Fair Market Value:** if the marital settlement agreement, separation agreement or divorce decree specifies a value for the portion of the property or interest transferred that is different from fair market value, enter that value here. You may choose to submit relevant portions of your separation agreement, marital settlement agreement or divorce decree, or any other information in support of the value attributed to the transferred property if you have evidence that the consideration was other than fair market value ..... \$ \_\_\_\_\_

PLEASE LIST AND ATTACH ANY ADDITIONAL INFORMATION SUBMITTED

**SCHEDULE M - MERE CHANGE OF FORM TRANSFERS**

For transfers occurring on or after June 9, 1994, a transfer that represents a mere change in identity or form of ownership or organization is not taxable to the extent the beneficial ownership of the real property or economic interest therein remains the same. (See instructions) ATTACH COPIES OF ALL RELEVANT DOCUMENTS.

- For each person or entity who, prior to the transaction being reported on this Schedule M, owned a beneficial interest in the property or economic interest therein transferred, report above the percentage of beneficial interest in that real property or economic interest therein owned by that owner before and after the transfer, and describe the relationship of each beneficial owner to the grantor and grantee. Attach additional pages, if necessary.
- If, for any owner, the amount reported in column D is less than the amount reported in column E, enter zero in column F.

1. NAME OF BENEFICIAL OWNER	B RELATIONSHIP TO GRANTOR	C RELATIONSHIP TO GRANTEE	D E PERCENTAGE INTEREST		F CHANGE <i>D minus E</i>
			BEFORE	AFTER	
			%	%	
2. TOTAL CHANGE (total of column F) Enter here and on Schedule 2, line 5.					



**SCHEDULE R - REAL ESTATE INVESTMENT TRUST TRANSFERS**

Real Estate Investment Trust Transfers ("REIT Transfers") are taxed at one-half of the otherwise applicable rate. (NYC Administrative Code Section 11-2102(e)) **Attach a copy of the prospectus to Form NYC-RPT and write "REIT Transfer" on the top of the first page of Form NYC-RPT.** If you are filing Form NYC-RPT reporting a REIT Transfer that qualifies as a mere change in identity or form of ownership or organization, you must also complete Schedule M.

**General Information****REIT TRANSFER**

A REIT Transfer is any deed or other instrument or transaction conveying or transferring real property or an economic interest in real property to a Real Estate Investment Trust as defined in Section 856 of the Internal Revenue Code (a "REIT"), or to a partnership or corporation in which a REIT owns a controlling interest immediately following the transaction and any issuance or transfer of an interest in a REIT or in such a partnership or corporation in connection with such a transaction, provided either:

1. the transaction occurs on or after June 9, 1994 in connection with the initial formation of the REIT and conditions 1(a), 2 and 3 below are met, or
2. the transaction occurs on or after July 13, 1996 and before September 1, 2002 (or after August 30, 2002 if the transfer is made pursuant to a binding written contract entered into before September 1, 2002, with a REIT or a partnership or corporation in which the REIT owns a controlling interest, and the date of execution of that contract is confirmed by independent evidence satisfactory to the Department), and conditions 1 (b) and 2 below are met.

For a definition of "controlling interest", see General Information for Form NYC-RPT, "Imposition of Tax."

**CONDITIONS**

- 1a. The value of the ownership interests in the REIT or in the partnership or corporation controlled by the REIT received by the grantor as consideration for the transaction must be equal to 40 percent or more of the excess of the value of the total consideration received over the amount of mortgages and other liens and encumbrances on the property or on the grantor's economic interest in the property, other than mortgages and other liens and encumbrances created in contemplation of the formation of the REIT.
- b. This condition is the same as Condition 1(a), except that the value of the ownership interests received as consideration must be equal to at least 50 percent rather than 40 percent of

the excess of the total consideration received over mortgages and other liens and encumbrances on the property or economic interest transferred excluding mortgages and other liens or encumbrances created in contemplation of the transaction reported on this Schedule R.

Use the worksheet on the following page of this Schedule to make this determination.

2. The interests in the REIT or in the partnership or corporation controlled by the REIT may not be transferred by the grantor or owners of the grantor within two years following the date of the transaction other than transfers within the two-year period resulting from the death of an individual grantor or owner of a grantor.
3. At least 75 percent of the cash proceeds of the initial public offering of REIT shares must be used for the following:
  - a. payments on loans secured by an interest in the real property or an economic interest therein owned directly or indirectly by the REIT, or payments into reserves therefor;
  - b. capital improvements to real property owned directly or indirectly by the REIT, or payments into reserves therefor;
  - c. brokerage fees and commissions, professional fees and payments to or on behalf of a tenant as an inducement to enter into a lease or sublease of real property owned directly or indirectly by the REIT, or payments into reserves therefor; or
  - d. payments to acquire real property or an economic interest therein other than an acquisition that would qualify as a REIT Transfer without regard to this condition 3.

**If condition 2 or 3, where applicable, ceases to be met after this Schedule R is filed, an amended Form NYC-RPT must be filed and any additional tax due must be paid.**

**WORKSHEET FOR CONDITIONS 1(a) and 1(b)**

1. Add lines 1, 2, 7, 8, 9 and 10 from Form NYC-RPT, Schedule 1 and enter total here.....1. \$ \_\_\_\_\_

2 a. Enter total number of REIT shares received .....a. \_\_\_\_\_

b. Enter maximum number of REIT shares into which ownership interests may be converted .....b. \_\_\_\_\_

c. Add lines a and b.....c. \_\_\_\_\_

d. Enter offering price per share of REIT shares on the date of the transaction reported.....d. \_\_\_\_\_

e. Multiply line 2c by line 2d .....e. \_\_\_\_\_

f. Enter value of ownership interests received not convertible into REIT shares .....f. \_\_\_\_\_

g. Add lines e and f .....2g. \_\_\_\_\_

3. Multiply line 1 by .40 for condition 1(a) or .50 for condition 1(b) .....3. \_\_\_\_\_

● If line 3 is greater than line 2g, the transaction does not qualify as a REIT transfer. **DO NOT FILE THIS SCHEDULE.** You must file Form NYC-RPT and compute your tax due on Schedule 2.

● If line 3 is less than or equal to line 2g, the transaction will qualify as a REIT Transfer, provided the other conditions are met. You should complete Form NYC-RPT substituting on line 4 of Schedule 2:

- .5% instead of 1%;
- .7125% instead of 1.425%;
- 1.3125% instead of 2.625%

SEE INSTRUCTIONS TO DETERMINE WHICH TAX RATE APPLIES

**Instructions for Completing Worksheet**

**LINE 1**  
Where the value of the underlying property transferred or interest therein is used in determining the consideration for a REIT Transfer, you may, but are not required to, report as the value of the real property or interest therein (Form NYC-RPT, Schedule 1, line 7), the estimated market value as determined by the Department of Finance as reflected on the most recent Notice of Assessment issued by the Department. (See *Statements of Audit Procedure 93-2-GCT/RPTT, 3/1/93 and 95-1-GCT/RPTT, 7/28/95*) Add to the amount reported on line 1 the amount of any mortgages and other liens and encumbrances created in contemplation of the formation of the REIT in the case of condition 1(a) or in contemplation of the transaction reported on this Schedule R in the case of condition 1(b).

**LINE 2**  
If the grantor received REIT shares as consideration for the transfer, enter on line 2a the number of REIT shares received. If the grantor received interests in a partnership or corporation controlled by the REIT that may be converted into REIT shares, enter on line 2b the maximum number of REIT shares into which such interests may be converted and attach an explanation of the terms of the conversion. If the grantor received interests that may be converted into REIT shares but you believe that the offering price for the REIT shares into which such interests may be converted is not a proper measurement of the value of the interests received, do not complete line 2b. Instead, attach an explanation of the terms of the conversion and enter on line 2f the fair market value of the interests received. If the grantor received interests in a partnership or corporation controlled by the REIT that cannot be converted into REIT shares at any time, enter on line 2f the fair market value of the interests received. If you enter an amount on line 2f, attach an explanation of the method used for determining the value of the interests received.

**Certification**

I swear or affirm under penalties of perjury that the grantor has no present intention to transfer or convey the REIT shares or interests in a partnership or corporation controlled by the REIT received by the grantor as consideration in the transaction reported on this Schedule R within two years of the date of the transfer, other than a distribution of such shares or interests to the partners or shareholders of the grantor, and that, to the best of my knowledge, condition 3 above regarding the use of the cash proceeds of the REIT offering will be satisfied, if applicable. I further swear or affirm that I will file an amended Form NYC-RPT and pay any additional tax due if any such transfer or conveyance occurs within such two-year period or if condition 3 above, if applicable, ceases to be met.

**GRANTOR**

Sworn to and subscribed to  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_,  
\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Name of Grantor  
\_\_\_\_\_  
Signature of Grantor

Notary's stamp or seal

**GRANTEE**

Sworn to and subscribed to  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_,  
\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Name of Grantee  
\_\_\_\_\_  
Signature of Grantee

Notary's stamp or seal

**AFFIDAVIT OF COMPLIANCE  
WITH SMOKE DETECTOR REQUIREMENT  
FOR ONE- AND TWO-FAMILY DWELLINGS**

State of New York }  
County of            } SS.:

The undersigned, being duly sworn, depose and say under penalty of perjury that they are the grantor and grantee of the real property or of the cooperative shares in a cooperative corporation owning real property located at

\_\_\_\_\_  
Street Address Unit/Apt.

\_\_\_\_\_  
Borough            New York,            Block            Lot            (the "Premises");

That the Premises is a one or two family dwelling, or a cooperative apartment or condominium unit in a one- or two-family dwelling, and that installed in the Premises is an approved and operational smoke detecting device in compliance with the provisions of Article 6 of Subchapter 17 of Chapter 1 of Title 27 of the Administrative Code of the City of New York concerning smoke detecting devices;

That they make affidavit in compliance with New York City Administrative Code Section 11-2105 (g). (The signatures of at least one grantor and one grantee are required, and must be notarized).

_____ Name of Grantor (Type or Print)	_____ Name of Grantee (Type or Print)
_____ Signature of Grantor	_____ Signature of Grantee
Sworn to before me this _____ date of _____ 20____	Sworn to before me this _____ date of _____ 20____

These statements are made with the knowledge that a willfully false representation is unlawful and is punishable as a crime of perjury under Article 210 of the Penal Law.

**NEW YORK CITY REAL PROPERTY TRANSFER TAX RETURNS FILED ON OR AFTER FEBRUARY 6th, 1990, WITH RESPECT TO THE CONVEYANCE OF A ONE- OR TWO-FAMILY DWELLING, OR A COOPERATIVE APARTMENT OR A CONDOMINIUM UNIT IN A ONE- OR TWO-FAMILY DWELLING, WILL NOT BE ACCEPTED FOR FILING UNLESS ACCOMPANIED BY THIS AFFIDAVIT.**

# Instructions for Form NYC-RPT



## Real Property Transfer Tax Return

### IMPORTANT

1. Always submit pages 1-4 of the return and Smoke Detector Requirement Affidavit. Attach Schedules A through I, Schedule M and Schedule R as required.
2. Where the consideration is \$400,000 or more, a copy of the Contract of Sale or closing statement must be attached to the return.
3. Please file your return at the correct office. See FILING OF RETURN on pages 16 and 17.
4. A fee of one hundred dollars (\$100) must be paid upon the filing of the form NYC-RPT for those transactions for which the filing of a New York State Real Property Transfer Report (RP-5217NYC) is not required to be filed. Such transactions include, but are not limited to, transfers of co-ops, leaseholds and controlling economic interests.

### IMPOSITION OF TAX

The tax is imposed on conveyances of real property or interests therein, on certain grants, assignments or surrenders of leasehold interests, on transfers of controlling economic interests in real property and on all transfers of shares of stock in a cooperative housing corporation or an entity formed for the purpose of cooperative ownership of real property when the consideration as entered on Schedule 2, Computation of Tax, line 3 exceeds \$25,000.

An *economic interest* in real property means:

- the ownership of shares of stock in a corporation which owns or leases real property;
- the ownership of an interest or interests in a partnership, association, or other unincorporated entity which owns or leases real property; and
- the ownership of a beneficial interest or interests in a trust which owns or leases real property.

A *controlling interest* in the case of a corporation means:

- 50% or more of the total combined voting power of all classes of stock of the corporation; or
- 50% or more of the total fair market value of all classes of stock of the corporation.

A *controlling interest* in the case of a partnership, association, trust or other unincorporated entity means:

- 50% or more of the capital, profits or beneficial interest in the partnership, association, trust or other unincorporated entity.

### PROPERTY LOCATION

Enter the location of the property that is transferred or the location of the property in which an economic interest is transferred. If the transfer involves more than one property, list the properties separately. Attach additional sheets if necessary.

### CONDITION OF TRANSFER - Check all boxes that apply

- g. Check here if the transfer was pursuant to a partial or complete liquidation of a corporation, partnership or other entity. See instructions for Schedule D.
- k. A gift of real property (or an interest therein) that is subject to indebtedness may be subject to tax because the indebtedness is deemed to be consideration for the transfer. However, see instructions for Schedule 2, line 2, transfers of interests in residential property on or after August 28, 1997.

- o. Nonprofit organizations should see instructions, page 17 for information on exemption from Real Estate Tax and related charges.

### Type of Property

Check the type of property that is transferred or in which an interest is transferred.

### Type of Interest

For any transfer where you intend to record a deed or other document you should check the relevant box at the left and file your return pursuant to the instructions on pages 16 and 17 of this booklet.

If you are not recording a deed or other document in connection with this transaction, check the box at the right and file your return with the New York City Department of Finance, Non-Recorded RPTT Return Processing, 66 John Street, 13th Floor, New York, NY 10038, pursuant to the instructions on pages 16 and 17 of this booklet.

If this is a transfer of stock in a cooperative housing corporation, complete Schedule B. If this is a transfer of stock or of partnership interests or other controlling economic interest in real property, complete Schedule H.

### SCHEDULE 1

#### DETAILS OF CONSIDERATION

**Cooperatives.** In the case of a transfer of an individual residential cooperative unit (other than the original transfer of the unit by the cooperative corporation or cooperative plan sponsor) the consideration does not include any portion of the mortgage on the underlying real property. In the case of an original transfer of any cooperative unit, or of a subsequent transfer of a cooperative unit other than an individual residential unit, a proportionate share of any preexisting mortgage(s) on the underlying real property must be included in the consideration. An individual unit that is used for residential purposes by the occupant shall be presumed to be residential unless such residential use is *de minimis*.

**Liquidations.** In the case of a liquidation of a corporation, partnership, or other entity, if the fair market value of the property or interest therein distributed exceeds the consideration received, such fair market value is the measure of the tax. Enter the amount from Schedule D, line 3 on Schedule 1, line 11.

**Marital Transfers.** In the case of a transfer pursuant to a separation agreement, marital settlement agreement or divorce decree, consideration will be presumed to be equal to the fair market value of the portion of the property or interest transferred unless you establish the consideration to be a different amount.

If the measure of consideration is fair market value, the fair market value amount should not be reduced by any mortgages on the property. The fair market value amount should be inserted on Line 10 of Schedule 1.

If the measure of consideration is a value for the property that is specified in an agreement or decree, this value should reflect the portion of any mortgage the grantee may have assumed and/or taken subject to rather than reflect only the equity transferred. The specified value should be inserted on Line 10 of Schedule 1. If the specified value does not include mortgages, the mortgage amounts must be added as appropriate on line(s) 2, 3, 4, or 6 of Schedule 1.

In either situation, if the real property is encumbered by any mortgages that qualify as excludible liens, you may deduct the percentage of any excludible liens equal to the percentage of the interest in the real property that is transferred on Line 2 of Schedule 2.

In addition, you must complete Schedule I.

**Transfers to Business Entities.** In the case of a transfer of property or interest therein to a business entity in exchange for an interest in the entity, the value of such interest in the entity is equal to the fair market value of the property or interest therein less the amount of mortgages, liens or encumbrances thereon. (See Schedules F and M)

**SCHEDULE 2  
COMPUTATION OF TAX**

**PAYMENT -**

If the real property is located in Staten Island (Richmond County), make check or money order payable to: **Richmond County Clerk.**

For real property not located in Staten Island, make check or money order payable to: **NYC Department of Finance.**

**LINE 1 - Total Consideration**

Enter the amount from line 11, Schedule 1, page 2.

**LINE 2 - Excludible liens- Transfers involving certain residential property or interest therein**

With certain exceptions, the amount of mortgages, liens or encumbrances is excluded from consideration for the transfer on or after August 28, 1997 of a one-, two-, or three-family house, an individual residential cooperative apartment or individual residential condominium unit, or economic interest in such property if the mortgage, lien or encumbrance existed before the date of the transfer and remains on the property or interest after the date of the transfer. This provision does not apply to any mortgage, lien or encumbrance placed on the property or interest in connection with, or in anticipation of, the transfer, or by reason of deferred payments of the purchase price. This exclusion also does not apply to a transfer to a mortgagee, lienor or encumbrancer of the property or interest, or to a qualifying real estate investment trust transfer. Recently adopted rules govern the application of the exclusion. Under the rules, an existing mortgage will be excluded in all transfers pursuant to gifts or divorce. In any other transfer, an examination time period beginning six months prior to, and ending three months after, the transfer is established. Mortgages placed on the property or discharged outside that time period will be excluded unless there is documentary evidence that the mortgage was placed or discharged in connection with the transfer. Mortgages placed or discharged within the examination period will be excluded unless the facts and circumstances indicate that the mortgage was placed or discharged in connection with the transfer. Mortgages that are modified will be excluded in all cases except where the modifications occur within the examination period AND result in a change in the identity of the lender PLUS a change of at least ten percent in either the interest rate or term of the mortgage loan. See Title 19 of the Rules of the City of NY §23-03(k) for more information.

Enter on line 2 of Schedule 2 the amount of any mortgage, lien or encumbrance included in the amount entered on line 3 of Schedule 1 that is eligible for the exclusion described above.

NOTE: You may not enter any amount online 2 if you have not checked box a, b or c under "Type of Property" on page 2 of Form NYC-RPT or you HAVE checked box d, f, q or t under "Condition of Transfer".

**LINE 4 - Tax Rate**

Insert the appropriate tax rate based on the consideration on line 3. Note: the tax rate is determined after certain liens are excluded but before taking into account the mere change of form exemption. Tax rates depend on the kind of real property that is transferred or is held by the entity whose stock or partnership interest is the subject of this transfer.

Effective for transfers on or after August 1, 1989, the tax rates are as follows:

**Certain Residential Property and Interests** 1% of the consideration where the consideration is \$500,000 or less or 1.425% of the consideration where the consideration is greater than \$500,000 in the following instances:

- conveyances where the real property transferred, or the real property in which the economic interest is transferred, is a one-, two-, or three family house, an individual cooperative apartment, an individual residential condominium unit, or an individual dwelling unit in a dwelling which is to be occupied as the residence or home of four or more families living independently of each other; and
- grants, assignments or surrenders of leasehold interests in a one-, two-, or three-family house, or an individual dwelling unit in a dwelling which is to be occupied or is occupied as the residence or home of four or more families living independently of each other.

An individual condominium that is used for residential purposes by the occupant shall be presumed to be residential, unless such residential use is *de minimis*. (For illustrations, see RCNY Section 23-03(b)(9) and (10).)

**Other Transfers**

- For all transfers involving property or interests in property other than the residential property specified above, the rate is 1.425% of the consideration where the consideration is \$500,000 or less or 2.625% of the consideration where the consideration is greater than \$500,000.

**LINE 5**

If you qualify for the "Mere Change In Form Exemption", enter the percentage from Schedule M, line 2, Column f. If you do not qualify for the Mere Change In Form Exemption, enter 100%.

**LINE 7 - Tax**

Attach additional schedules 1 and 2 if varying tax rates apply.

**LINE 8 - Credit**

**a. Liquidations** - If a purchaser acquires a controlling economic interest in a corporation, partnership, association, trust or other entity owning real property in a transaction subject to the Real Property Transfer Tax and within 24 months of such acquisition the entity owning the real property or interest therein is liquidated and the real property or interest therein is conveyed to the purchaser of the controlling economic interest, a credit is available against the transfer tax due on the liquidation in the amount of the transfer tax paid with respect to the original acquisition of the controlling economic interest. In no event shall this credit be greater than the tax payable upon the conveyance in liquidation.

**b. Original Co-op Transfer** - In the case of the original transfer of cooperative housing corporation stock by a cooperative corporation or cooperative plan sponsor in connection with the grant or transfer of a proprietary leasehold, a credit is allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the land and building or buildings comprising the cooperative dwelling or dwellings. This credit applies only for original transfers of stock by the cooperative housing corporation or cooperative plan sponsor. It does not apply to taxable resales of cooperative housing corporation stock.

No credit is allowed for any tax paid more than 24 months prior to the date on which occurs the first in a series of transfers of shares of stock in the initial offering of cooperative housing corporation shares.

Attach a detailed schedule to support the credit claimed on this line.

**LINE 10 - Interest**

If the tax is not paid on or before the due date (determined without regard to any extension of time), interest must be paid

on the amount of the underpayment from the due date to the date paid. For information as to the applicable rate of interest call (212) 504-4036.

**LINE 11 - Penalties**

a) If you fail to file a return when due, add to the tax 5% for each month or partial month the form is late up to 25%, unless the failure is due to reasonable cause.

b) If you fail to pay the tax shown on the return by the prescribed filing date, add to the tax (less any payments made) 1/2% for each month or partial month the payment is late up to 25%, unless the failure is due to reasonable cause.

c) The total of the additional charges in a) and b) may not exceed 5% for any one month.

**SCHEDULE 3**

If this transaction includes more than one grantor or grantee, complete this schedule and provide the requested information for all such grantors or grantees that are not listed on page 1 of this form. For any grantee and grantor that is a partnership, provide the requested information for each general partner. If this transaction includes more than one grantee or grantor and any of them is a partnership, attach a separate schedule 3 for each grantee or grantor providing the information for each general partner.

**SCHEDULE A**

**Line 2d**

If bid price is paid in cash, enter here and on Schedule 1, line 1. If other than cash, enter here and on the appropriate line on Schedule 1.

**Line 2f**

Enter remaining mortgages, liens or encumbrances here and on Schedule 1, line 3, 4, 5, 6 or 10 as appropriate.

**SCHEDULE C**

**Line 4**

Enter remaining mortgages, liens or encumbrances here and on Schedule 1, line 3, 4, 5, 6 or 10 as appropriate.

**SCHEDULE D**

In a liquidation, the measure of the tax is the greater of fair market value or consideration. The greater of fair market value or consideration, and the applicable rate of tax are determined separately for each parcel of real property or economic interest in a parcel of real property that is

distributed in a liquidation. If this transaction involves the distribution in liquidation of more than one such parcel or economic interest, complete a separate Schedule D for each such property or interest. Attach additional schedules 1 and 2 as necessary. (See §23-03 (g) of the rules of the City of New York for examples of calculation of the tax base in liquidations.)

**SCHEDULE F**

**Line 8**

If you received other property in exchange for the real property or interest therein that was transferred to the business entity, enter the value of the other property here. If assets other than real property or interests therein were transferred to the business entity in connection with this transaction, the consideration received must be apportioned among the assets transferred. Attach schedule.

**SCHEDULE H**

If the entity named in A owns assets in addition to real property or interests therein, the consideration subject to tax is deemed equal to the fair market value of the entity's real property or interests therein multiplied by the percentage of the ownership interest that is transferred. See Administrative Code §11-2102(d). Consideration should be entered on Schedule 1 on appropriate lines.

If the entity named in A owns more than one parcel of real property or economic interest therein, the consideration and the applicable rate of tax is determined separately for each parcel of property or economic interest. Attach separate Schedules H, 1 and 2, as necessary.

If any of the percentages in B, C, D, E or F is 50 percent or more, a return must be filed and tax paid with respect to any transaction reflected in items B, C, D, E or F. The tax rate applicable to each item of real property or economic interest therein is based on its proportionate share of the aggregate consideration for all transactions reflected in items B, C, D, E or F.

**SCHEDULE M - MERE CHANGE OF FORM TRANSFERS**

**For transfers occurring on or after June 9, 1994, a transfer that represents a mere change in identity or form of ownership or organization is not taxable to the extent the beneficial ownership of the**

**real property or economic interest therein remains the same. (NYC Administrative Code Section 11-2106 (b) (8)). However, a transfer to a cooperative housing corporation, other than a corporation formed under Articles 2, 4, 5, or 11 of the Private Housing Finance Law, of the property that will comprise the cooperative dwelling will not qualify for this exemption.**

The following are types of transfers that may qualify for the mere-change exemption in whole or in part. If you checked condition "g", "i", or "l" on Form NYC-RPT, page 1, the transfer may qualify for this exemption in whole or in part. Transfers other than those listed may also qualify for the exemption in whole or in part.

- a. A transfer of property or interest therein to a new or pre-existing corporation in which the owners of the property or interest therein prior to the transfer are shareholders;
- b. A transfer of property or interest therein by one wholly-owned subsidiary of a corporation to another wholly-owned subsidiary of the same corporation;
- c. A transfer of property or interest therein to a new or pre-existing partnership in which the owners of the property or interest therein prior to the transfer are partners; or
- d. A distribution of property or interest therein by a corporation or partnership to its shareholders or partners.

**Examples:**

- 1. A transfer of property owned by three individuals as equal tenants-in common to a corporation or partnership in which the same three individuals are equal shareholders or partners will be fully exempt as a mere change of form of ownership.
- 2. A transfer of a cooperative apartment owned by an individual to a corporation in which the individual is a 25 percent shareholder will be exempt to the extent that the individual retains a 25% beneficial interest in the coop after the transfer.
- 3. Corporation X is owned 25% by individual A and 75% by individual B.

If Corporation X distributes New York City real property to A and B as equal tenants-in-common, the transfer will be exempt to the extent A retains the same 25 percent interest in the property and B retains a 50 percent interest in the property. The transfer will be taxable to the extent of the additional 25 percent interest in the property transferred to A

For additional information, see Title 19 of the Rules of the City of NY §23-05(b)(8).

**EXEMPTIONS FROM THE TRANSFER TAX**

A. The following parties are exempt from the payment of the tax and from filing a return:

- 1. The State of New York, its agencies, instrumentalities, public corporations (including a public corporation created pursuant to agreement of compact with another state or Canada) or political subdivisions.
- 2. The United States of America and its agencies and instrumentalities, insofar as they are immune from taxation.

The exemption of such governmental bodies does not relieve a grantee from them of liability for the tax or from filing a return.

B. The tax imposed does not apply to any of the following deeds:

- 1. A deed, instrument or transaction by or to the United Nations or any other world-wide international organization of which the United States is a member.
- 2. A deed, instrument or transaction by or to any corporation, association, trust, community chest, fund or foundation, organized and operated exclusively for religious, charitable, or educational purposes, or for the prevention of cruelty to children or animals, and no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, provided, however, that nothing in this paragraph shall include an

organization operated for the primary purpose of carrying on a trade or business for profit, whether or not all of its profits are payable to one or more organizations described in this paragraph.

- 3. A deed, instrument or transaction to any governmental body listed in "A" above.
- 4. A deed or instrument given solely as security for a debt, or a deed or instrument given solely for the purpose of returning such security.
- 5. A deed or instrument or transaction from a mere agent, dummy, strawman or conduit to a principal, or a deed from the principal to an agent, dummy, strawman or conduit.

Where a tax does not apply to any deed, neither the grantor nor the grantee is required to pay the tax. However, a return relating to the deed must be filed.

**FILING OF RETURN AND PAYMENT OF FILING FEE AND TAX**

A notarized joint return shall be filed by both the grantor and the grantee for each deed, instrument, or transaction, whether or not a tax is due. Thus, a return must be filed although the consideration for the transaction is \$25,000 or less. Where the total consideration is \$400,000 or more, a copy of the contract of sale or closing statement must be attached to the return. A return need not be filed for the grant of a leasehold interest in a 1-, 2-, or 3-family house or an individual dwelling unit except where tax is owed or the lease is to be recorded.

**FILING FEE**

A fee of one hundred dollars (\$100) must be paid upon the filing of the form NYC-RPT for those transactions for which the filing of a New York State Real Property Transfer Report (RP-5217NYC) is not required to be filed. Such transactions include, but are not limited to, transfers of co-ops, leaseholds and controlling economic interests.

**RECORDED TRANSFERS**

Returns relating to a transfer in Manhattan, the Bronx, Brooklyn or Queens, where a deed or other document

is recorded, must be filed via ACRIS (nyc.gov/finance). Any tax due is required to be paid at the office of the City Register in the county where the deed is recorded within 30 days of the delivery of the deed.

In Staten Island, returns relating to a transfer in Staten Island where a deed or other document is recorded, are required to be filed using the paper original and any tax due is required to be paid at the Office of the County Clerk for Richmond County within 30 days of the delivery of the deed.

**The locations of the offices of the City Register are as follows:**

**MANHATTAN** (New York County)  
66 John Street, 13th Floor  
New York, New York 10038

**BRONX** (Bronx County)  
3030 Third Avenue, 2nd Floor  
Bronx, New York 10455

**BROOKLYN** (Kings County)  
210 Joralemon Street, Room 2  
Brooklyn, New York 11201

**QUEENS** (Queens County)  
144-06 94th Avenue  
Jamaica, NY 11435

The location of the Richmond County Clerk is as follows:

**STATEN ISLAND** (Richmond County)  
Richmond County Clerk  
County Court House, Room 103  
Staten Island, New York 10301  
(718) 390-5386

**NON-RECORDED TRANSFERS**

In the case of transfers where no document is recorded, including but not limited to transfers of controlling economic interests in real property or transfers of interests in entities formed for cooperative ownership of real property, returns must be filed within 30 days of the transfer with:

**NYC Department of Finance  
Non-Recorded RPTT Return Processing  
66 John Street, 13th Floor  
New York, NY 10038**

The tax may be paid by certified check, or an Attorney's Trust Account check, drawn on a U.S. bank, or money order made payable to the order of:

**NYC Department of Finance.**

**Returns filed on or after February 6, 1990, in connection with a conveyance of a one- or two-family dwelling or a cooperative apartment or condominium unit in a one- or two-family dwelling must be accompanied by an Affidavit of Compliance with Smoke Detector Requirement.**

NYC-RPT returns are available at City Register offices, the office of the Richmond County Clerk or online at nyc.gov/finance.

**IMPORTANT REAL ESTATE TAX INFORMATION FOR NONPROFIT ORGANIZATIONS**

If you are a nonprofit organization you should know:

1. You must apply for an exemption from Real Estate Tax with the Payment Operations Division. Exemption forms can be obtained online at **nyc.gov/finance**, or any of the Borough Offices of the Property Division.

**MANHATTAN**  
66 John Street, 13th Floor  
New York, NY 10038

**BRONX**  
3030 Third Avenue, 2nd Floor  
Bronx, NY 10455

**BROOKLYN**  
210 Joralemon St., Room 200  
Brooklyn, NY 11201

**QUEENS**  
144-06 94th Avenue  
Jamaica, NY 11435

**STATEN ISLAND**  
350 St. Marks Place  
Staten Island, NY 10301

2. Once you have received an exemption, you must renew it every year with the Payment Operations Division.
3. Many groups are exempt from property taxes but still may be required to pay water and sewer charges. You must file separately for an exemption from water and sewer charges with the Bureau of Customer and Conservation Services. Applications can be obtained from any of the Bureau's borough offices (call (718) 595-7000 for addresses). Once granted, this exemption need not be renewed annually.

**EVEN IF THIS TRANSFER OF REAL PROPERTY IS FROM ANOTHER NONPROFIT ORGANIZATION, YOU MUST STILL COMPLY WITH THE ABOVE REQUIREMENTS.**

For more information call 311, or visit our website at **nyc.gov/finance**

**PRIVACY ACT NOTIFICATION**

The Federal Privacy Act of 1974, as amended, requires agencies requesting Social Security Numbers to inform individuals from whom they seek this information as to whether compliance with the request is voluntary or mandatory, why the request is being made and how the information will be used. The disclosure of Social Security Numbers for grantors and grantees is mandatory and is required by section 11-102.1 of the Administrative Code of the City of New York. Disclosure by attorneys is voluntary. Such numbers disclosed on any report or return are requested for tax administration purposes and will be used to facilitate the processing of tax returns and to establish and maintain a uniform system for identifying taxpayers who are or may be subject to taxes administered and collected by the Department of Finance. Such numbers may also be disclosed as part of information contained in the taxpayer's return to another department, person, agency or entity as may be required by law, or if the taxpayer gives written authorization to the Department of Finance.



FOR CITY USE ONLY

C1. County Code  C2. Date Deed Recorded  /  /   
 Month Day Year

C3. Book  OR C4. Page   
 C5. CRFN



**REAL PROPERTY TRANSFER REPORT**  
 STATE OF NEW YORK  
 STATE BOARD OF REAL PROPERTY SERVICES  
**RP - 5217NYC**  
 (Rev 11/2002)

**PROPERTY INFORMATION**

1. Property Location  STREET NUMBER  STREET NAME  BOROUGH  ZIP CODE

2. Buyer Name  LAST NAME / COMPANY  FIRST NAME   
 LAST NAME / COMPANY  FIRST NAME

3. Tax Billing Address  Indicate where future Tax Bills are to be sent (if other than buyer address (at bottom of form))  
 LAST NAME / COMPANY  FIRST NAME   
 STREET NUMBER AND STREET NAME  CITY OR TOWN  STATE  ZIP CODE

4. Indicate the number of Assessment Roll parcels transferred on the deed  # of Parcels OR  Part of a Parcel

5. Deed Property Size  FRONT FEET  X  DEPTH OR  ACRES

6. Ownership Type is Condominium

7. New Construction on Vacant Land

8. Seller Name  LAST NAME / COMPANY  FIRST NAME   
 LAST NAME / COMPANY  FIRST NAME

9. Check the box below which most accurately describes the use of the property at the time of sale:  
 A  One Family Residential C  Residential Vacant Land E  Commercial G  Entertainment / Amusement I  Industrial  
 B  2 or 3 Family Residential D  Non-Residential Vacant Land F  Apartment H  Community Service J  Public Service

**SALE INFORMATION**

10. Sale Contract Date  /  /   
 Month Day Year

11. Date of Sale / Transfer  /  /   
 Month Day Year

12. Full Sale Price   
 ( Full Sale Price is the total amount paid for the property including personal property. This payment may be in the form of cash, other property or goods, or the assumption of mortgages or other obligations.) Please round to the nearest whole dollar amount.

13. Indicate the value of personal property included in the sale

14. Check one or more of these conditions as applicable to transfer:  
 A  Sale Between Relatives or Former Relatives  
 B  Sale Between Related Companies or Partners in Business  
 C  One of the Buyers is also a Seller  
 D  Buyer or Seller is Government Agency or Lending Institution  
 E  Deed Type not Warranty or Bargain and Sale ( Specify Below )  
 F  Sale of Fractional or Less than Fee Interest ( Specify Below )  
 G  Significant Change in Property Between Taxable Status and Sale Dates  
 H  Sale of Business is Included in Sale Price  
 I  Other Unusual Factors Affecting Sale Price ( Specify Below )  
 J  None

**ASSESSMENT INFORMATION - Data should reflect the latest Final Assessment Roll and Tax Bill**

15. Building Class  16. Total Assessed Value (of all parcels in transfer)

17. Borough, Block and Lot / Roll Identifier(s) ( If more than three, attach sheet with additional identifier(s) )

**CERTIFICATION**

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and I understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

<b>BUYER</b>	<b>BUYER'S ATTORNEY</b>
<input type="text"/> BUYER SIGNATURE <input type="text"/> DATE	<input type="text"/> LAST NAME <input type="text"/> FIRST NAME
<input type="text"/> STREET NUMBER <input type="text"/> STREET NAME (AFTER SALE)	<input type="text"/> AREA CODE <input type="text"/> TELEPHONE NUMBER
<input type="text"/> CITY OR TOWN <input type="text"/> STATE <input type="text"/> ZIP CODE	<b>SELLER</b>
	<input type="text"/> SELLER SIGNATURE <input type="text"/> DATE





## Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

**Schedule A – Information relating to conveyance**

<b>Grantor/Transferor</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantor )	Social security number
	Mailing address	Social security number
	City State ZIP code	Federal EIN
	Single member's name if grantor is a single member LLC (see instructions)	Single member EIN or SSN
	<hr/>	
<b>Grantee/Transferee</b> <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Estate/Trust <input type="checkbox"/> Single member LLC <input type="checkbox"/> Other	Name (if individual, last, first, middle initial) ( <input type="checkbox"/> check if more than one grantee )	Social security number
	Mailing address	Social security number
	City State ZIP code	Federal EIN
	Single member's name if grantee is a single member LLC (see instructions)	Single member EIN or SSN
	<hr/>	

Location and description of property conveyed

Tax map designation – Section, block & lot (include dots and dashes)	SWIS code (six digits)	Street address	City, town, or village	County

Type of property conveyed (check applicable box)

<b>1</b> <input type="checkbox"/> One- to three-family house <b>2</b> <input type="checkbox"/> Residential cooperative <b>3</b> <input type="checkbox"/> Residential condominium <b>4</b> <input type="checkbox"/> Vacant land	<b>5</b> <input type="checkbox"/> Commercial/Industrial <b>6</b> <input type="checkbox"/> Apartment building <b>7</b> <input type="checkbox"/> Office building <b>8</b> <input type="checkbox"/> Other _____	Date of conveyance <table style="width: 100%; border: 1px solid black;"> <tr> <td style="width: 33%; text-align: center;">month</td> <td style="width: 33%; text-align: center;">day</td> <td style="width: 33%; text-align: center;">year</td> </tr> </table>	month	day	year	Percentage of real property conveyed which is residential real property _____ % (see instructions)
month	day	year				

Condition of conveyance (check all that apply)

a. <input type="checkbox"/> Conveyance of fee interest  b. <input type="checkbox"/> Acquisition of a controlling interest (state percentage acquired _____ %)	f. <input type="checkbox"/> Conveyance which consists of a mere change of identity or form of ownership or organization (attach Form TP-584.1, Schedule F)  g. <input type="checkbox"/> Conveyance for which credit for tax previously paid will be claimed (attach Form TP-584.1, Schedule G)	i. <input type="checkbox"/> Option assignment or surrender  m. <input type="checkbox"/> Leasehold assignment or surrender  n. <input type="checkbox"/> Leasehold grant
c. <input type="checkbox"/> Transfer of a controlling interest (state percentage transferred _____ %)	h. <input type="checkbox"/> Conveyance of cooperative apartment(s)	o. <input type="checkbox"/> Conveyance of an easement
d. <input type="checkbox"/> Conveyance to cooperative housing corporation	i. <input type="checkbox"/> Syndication	p. <input type="checkbox"/> Conveyance for which exemption from transfer tax claimed (complete Schedule B, Part III)
e. <input type="checkbox"/> Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest (attach Form TP-584.1, Schedule E)	j. <input type="checkbox"/> Conveyance of air rights or development rights k. <input type="checkbox"/> Contract assignment	q. <input type="checkbox"/> Conveyance of property partly within and partly outside the state r. <input type="checkbox"/> Conveyance pursuant to divorce or separation s. <input type="checkbox"/> Other (describe) _____

<i>For recording officer's use</i>	Amount received Schedule B., Part I \$ _____ Schedule B., Part II \$ _____	Date received	Transaction number
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**Schedule B – Real estate transfer tax return** (Tax Law, Article 31)

**Part I – Computation of tax due**

- 1 Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, check the exemption claimed box, enter consideration and proceed to Part III) .....  **Exemption claimed**
- 2 Continuing lien deduction (see instructions if property is taken subject to mortgage or lien) .....
- 3 Taxable consideration (subtract line 2 from line 1) .....
- 4 Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3 .....
- 5 Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G) .....
- 6 Total tax due\* (subtract line 5 from line 4) .....

1.		
2.		
3.		
4.		
5.		
6.		

**Part II – Computation of additional tax due on the conveyance of residential real property for \$1 million or more**

- 1 Enter amount of consideration for conveyance (from Part I, line 1) .....
- 2 Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...
- 3 Total additional transfer tax due\* (multiply line 2 by 1% (.01)) .....

1.		
2.		
3.		

**Part III – Explanation of exemption claimed on Part I, line 1** (check any boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, the state of New York, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada)..... a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F..... f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor’s personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, section 1401(e) (attach documents supporting such claim) ..... k

\*The total tax (from Part I, line 6 and Part II, line 3 above) is due within 15 days from the date conveyance. Please make check(s) payable to the county clerk where the recording is to take place. If the recording is to take place in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, make check(s) payable to the **NYC Department of Finance**. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule C – Credit Line Mortgage Certificate** (Tax Law, Article 11)

**Complete the following only if the interest being transferred is a fee simple interest.**

I (we) certify that: *(check the appropriate box)*

1.  The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2.  The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
  - The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
  - The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
  - The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
  - The maximum principal amount secured by the credit line mortgage is \$3,000,000 or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

**Please note:** for purposes of determining whether the maximum principal amount secured is \$3,000,000 or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- Other *(attach detailed explanation)*.
3.  The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
    - A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
    - A check has been drawn payable for transmission to the credit line mortgagee or his agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
  4.  The real property being transferred is subject to an outstanding credit line mortgage recorded in \_\_\_\_\_ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is \_\_\_\_\_. No exemption from tax is claimed and the tax of \_\_\_\_\_ is being paid herewith. *(Make check payable to county clerk where deed will be recorded or, if the recording is to take place in New York City but not in Richmond County, make check payable to the NYC Department of Finance.)*

**Signature (both the grantor(s) and grantee(s) must sign)**

The undersigned certify that the above information contained in schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of his/her knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Grantor signature	Title	Grantee signature	Title
Grantor signature	Title	Grantee signature	Title

**Reminder:** Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you checked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place or, if the recording is in the New York City boroughs of Manhattan, Bronx, Brooklyn, or Queens, to the **NYC Department of Finance**? If no recording is required, send your check(s), made payable to the **Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-5045.

**Schedule D - Certification of exemption from the payment of estimated personal income tax** (Tax Law, Article 22, section 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part II, and check the second box under *Exemptions for nonresident transferor(s)/seller(s)* and sign at bottom.

**Part I - New York State residents**

If you are a New York State resident transferor(s)/seller(s) listed in Schedule A of Form TP-584 (or an attachment to Form TP-584), you must sign the certification below. If one or more transferors/sellers of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

**Certification of resident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law, section 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

**Note:** A resident of New York State may still be required to pay estimated tax under Tax Law, section 685(c), but not as a condition of recording a deed.

**Part II - Nonresidents of New York State**

If you are a nonresident of New York State listed as a transferor/seller in Schedule A of Form TP-584 (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law, section 663(c), check the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor(s)/seller(s), that transferor(s)/seller(s) is not required to pay estimated personal income tax to New York State under Tax Law, section 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, please photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on page 1 of Form TP-584-I.

**Exemption for nonresident transferor(s)/seller(s)**

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor(s)/seller(s) (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law, section 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from \_\_\_\_\_ Date to \_\_\_\_\_ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of the state of New York, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date



# Real Estate Transfer Tax Return Supplemental Schedules

Attach this form with the applicable schedule completed to Form TP-584 for the following conveyances:

- Conveyances pursuant to or in lieu of foreclosure or pursuant to a secured party's enforcement of a lien or other security interest
- Conveyances that consist of a mere change of identity or form of ownership or organization
- Conveyances for which credit for tax previously paid will be claimed

Please print or type

Name of Grantor (as shown on Form TP-584)	Grantor's social security number or EIN
Name of Grantee (as shown on Form TP-584)	Grantee's social security number or EIN
Location of property conveyed (as shown on Form TP-584)	

**Schedule E - Conveyance pursuant to or in lieu of foreclosure or pursuant to a secured party's enforcement of a lien or other security interest (Complete the applicable part if condition "e" was checked in Schedule A, Form TP-584)**

**Part I - Conveyance pursuant to a mortgage foreclosure or any other action governed by the Real Property Actions and Proceedings Law**

1 Amount of foreclosure judgment or bid price (see instructions) .....	<b>1</b>		
2 Amount of any other liens or encumbrances (not included on line 1) remaining on property after the conveyance .....	<b>2</b>		
3 Add lines 1 and 2 (if debt is nonrecourse, skip line 4 and enter this amount on line 5) .....	<b>3</b>		
4 If recourse debt, enter the fair market value of real property (see instructions) .....	<b>4</b>		
5 Consideration for conveyance (if recourse debt, enter the amount from line 3 or line 4, whichever is lower; also enter on Form TP-584, Schedule B, Part I, line 1) .....	<b>5</b>		

**Part II - Conveyance to a mortgagee or lienor in lieu of foreclosure**

6 Unpaid balance of debt secured by mortgage (see instructions) .....	<b>6</b>		
7 Amount of any other liens or encumbrances (not included on line 6) remaining on property after the conveyance .....	<b>7</b>		
8 Add lines 6 and 7 (if debt is nonrecourse, skip line 9 and enter this amount on line 10) .....	<b>8</b>		
9 If recourse debt, enter the fair market value of real property (see instructions) .....	<b>9</b>		
10 If recourse debt, enter the amount from line 8 or line 9, whichever is lower .....	<b>10</b>		
11 Any other amount paid by the grantee to the grantor for the real property .....	<b>11</b>		
12 Consideration for conveyance (add lines 10 and 11; enter here and on Form TP-584, Schedule B, Part I, line 1) .....	<b>12</b>		

**Part III - Conveyance of real property in lieu of or pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease(s)**

13 Unpaid balance of debt secured by the pledge of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) (see instructions) .....	<b>13</b>		
14 Amount of any other liens, security interest or other obligations (not included on line 13) remaining on the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) after the conveyance .....	<b>14</b>		
15 Add lines 13 and 14 (if debt is nonrecourse, skip line 16 and enter this amount on line 17) .....	<b>15</b>		
16 If recourse debt, enter fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) (see instructions) .....	<b>16</b>		
17 If recourse debt, enter the amount from line 15 or line 16, whichever is lower .....	<b>17</b>		
18 Pro rata portion of the total amount of any liens or encumbrances remaining on the real property of the cooperative housing corporation after the conveyance (see instructions) .....	<b>18</b>		
19 Any other amount paid by the grantee to the grantor for the conveyance .....	<b>19</b>		
20 Consideration for conveyance (add lines 17, 18 and 19; enter amount here and on Form TP-584, Schedule B, Part I, line 1) .....	<b>20</b>		

**Part IV - Conveyance of real property in lieu of or pursuant to a secured party's enforcement of a lien, security interest or other rights on or in shares of stock, partnership interests or other instruments (i.e., transfer or acquisition of a controlling interest in any entity with an interest in real property)**

21	Unpaid balance of debt secured by the pledge of the ownership interest in the entity .....	21		
22	Amount of any other liens, security interests or obligations (not included on line 21) remaining on the ownership interest in the entity after the conveyance .....	22		
23	Amount of any liens or encumbrances remaining on the real property of the entity after the conveyance, multiplied by the percentage in the entity being transferred or acquired .....	23		
24	Amount of any other debt or obligation of the entity, multiplied by the percentage in the entity being transferred or acquired .....	24		
25	Any other amount paid by the grantee to the grantor for the conveyance .....	25		
26	Total (add lines 21 through 25) .....	26		
27	Apportionment of amount on line 26 (see instructions) .....	27		
28	Fair market value of real property multiplied by the percentage in the entity being transferred or acquired .....	28		
29	Consideration for conveyance (enter the amount from line 27 or line 28, whichever is less; also enter on Form TP-584, Schedule B, Part I, line 1) .....	29		

**Schedule F - Conveyance that consists of a mere change of identity or form of ownership or organization (Complete if condition "f" was checked in Schedule A, Form TP-584)**

30	Fair market value of real property at time of conveyance .....	30		
31	Percentage of interest conveyed not subject to the mere change exemption .....	31		
32	Consideration for conveyance (multiply line 30 by line 31; enter amount here and on Form TP-584, Schedule B, Part I, line 1) .....	32		
33	Continuing lien deduction, if applicable (see instructions and multiply continuing lien, if any, by percentage of interest conveyed on line 31; enter amount here and on Form TP-584, Schedule B, Part I, line 2) .....	33		
34	Taxable consideration (subtract line 33 from line 32; enter amount here and on Form TP-584, Schedule B, Part I, line 3) .....	34		

**Schedule G - Conveyance for which credit for tax previously paid will be claimed (Complete the applicable part if condition "g" was checked in Schedule A, Form TP-584)**

**Part I - Computation of credit against tax due on conveyance to the extent tax was paid by grantor on a prior creation of leasehold**

35	Value of consideration grantor is not entitled to receive after conveyance (see instructions) .....	35		
36	Value of consideration used in original computation to determine the transfer tax due (see instructions) .....	36		
37	Percentage of credit to be applied (divide line 35 by line 36) .....	37		
38	Transfer tax paid by grantor on prior grant of leasehold (attach copy of original Form TP-584 previously filed and proof of payment) .....	38		
39	Amount of credit to be applied to transfer tax due on current conveyance (multiply line 37 by line 38; enter amount here and on Form TP-584, Schedule B, Part I, line 5) .....	39		

**Part II - Computation of credit against tax due on conveyance of cooperative shares to the extent tax was paid on conveyance to the cooperative housing corporation**

40	Number of shares allocated to the unit(s) for which proprietary leasehold(s) is being granted .....	40		
41	Total number of shares of stock in the cooperative housing corporation .....	41		
42	Percentage of credit to be applied (see instructions and divide line 40 by line 41) .....	42		
43	Transfer tax paid on conveyance of the real property to the cooperative housing corporation (attach copy of original TP-584 previously filed and proof of payment) .....	43		
44	Percentage of interest that would have qualified as a mere change on conveyance to cooperative housing corporation .....	44		
45	Proportionate amount of transfer tax paid on conveyance (multiply line 43 by line 44) .....	45		
46	Amount of credit to be applied to transfer tax due on conveyance of units for which proprietary leasehold(s) is being granted (multiply line 42 by line 45; enter amount here and on Form TP-584, Schedule B, Part I, Line 5) .....	46		



## Instructions

### Purpose of Form TP-584.1

This form must be completed and filed with Form TP-584 for all conveyances that are pursuant to or in lieu of foreclosure or any other action governed by the Real Property Actions and Proceedings Law and for conveyances pursuant to a secured party's enforcement of a lien or other security interest, except for such conveyances where part of the debt is recourse and part of the debt is nonrecourse (see Schedule E), for conveyances that consist in whole or in part of a mere change of identity or form of ownership or organization (see Schedule F), and for conveyances for which a credit will be claimed for tax previously paid (see Schedule G).

### Specific Instructions

#### Schedule E

For purposes of Schedule E, **continuing liens** are liens or encumbrances that after the conveyance, remain either on the real property, the shares of stock in the cooperative housing corporation and/or proprietary lease(s) or the ownership interest in the entity, depending on whether the conveyance is the type described in Part I, II, III or IV of Schedule E.

Pursuant to section 575.11(a)(2)(ii) of the real estate transfer tax regulations, a debt is **recourse debt** to the extent that, as of the date of conveyance, the grantor or a person related to the grantor, including any guarantor, bears the economic risk of loss for the debt beyond any loss attributable to the value of the property securing the debt.

A grantee is **related** to the mortgagee or lienor to the extent that the mere change of identity or form of ownership exemption, as provided in section 1405(b)(6) of the Tax Law, would apply to a conveyance by the mortgagee or lienor to the grantee.

Where the grantee is the mortgagee or lienor, as in the type of conveyances described in Parts I and II or the secured party, as in the type of conveyances described in Parts III and IV, or its agent, nominee or an entity wholly owned by such mortgagee, lienor or secured party, Schedule E may be used only if the debt, including continuing liens, is either **all recourse** or **all nonrecourse**. If the debt is not either all recourse or all nonrecourse, do **not** use Schedule E. Attach a separate schedule setting forth the method of computation.

#### Part I

**Line 1** — If real property is being conveyed pursuant to a mortgage foreclosure or any other action governed by the Real Property Actions and Proceedings Law and the grantee is the mortgagee or lienor, its agent, nominee or an entity wholly owned by the mortgagee or lienor, enter the amount of judgment of foreclosure or the bid price, whichever is higher. The amount of judgment of foreclosure includes any interest accrued through the date of transfer.

If the grantee is a person unrelated to the mortgagee or lienor, regardless whether the debt is recourse or nonrecourse, enter the bid price.

If the grantee is an entity partially owned by the mortgagee or lienor and partially owned by a person unrelated to the mortgagee or lienor, enter the sum of (1) the amount of judgment of foreclosure or the bid price, whichever is higher, multiplied by the percentage that represents the mortgagee's or lienor's beneficial interest in the grantee and (2) the bid price multiplied by the percentage that represents the unrelated person's beneficial interest in the grantee.

For this computation, the grantee is deemed to be the party who ultimately acquires the real property as a result of a mortgage foreclosure sale.

**Example:** X, a mortgagee, has the highest bid at a foreclosure sale. X assigns the bid to an unrelated third party, Z, who ultimately acquires the property. Z is the grantee. The consideration for the conveyance of the real property is the bid price paid by Z to the referee.

**Line 2** — Enter the amount of any continuing liens. Do not include the amount of any liens or encumbrances included on line 1.

**Line 3** — Add lines 1 and 2. If debt is **nonrecourse** or if the grantee is a person unrelated to the mortgagee or lienor, skip line 4 and enter the line 3 amount on line 5.

**Line 4** — Where the debt is **recourse debt** and the grantee is the mortgagee or lienor, its agent, nominee or an entity wholly owned by the mortgagee or lienor, enter the fair market value of the real property.

Where the grantee is an entity partially owned by the mortgagee or lienor and partially owned by a person unrelated to the mortgagee or lienor, if the percentage that represents the mortgagee's or lienor's beneficial interest in the grantee multiplied by the sum of the higher of the judgment of foreclosure or bid price and any continuing liens, exceeds the fair market value of the real property multiplied by such mortgagee's or lienor's percentage, enter the sum of (1) the fair market value of the real property multiplied by the percentage that represents the mortgagee's or lienor's beneficial interest in the grantee, and (2) the bid price plus continuing liens multiplied by the percentage that represents the unrelated person's ownership interest in the grantee.

**Line 5** — If debt is recourse, enter line 3 or line 4, whichever is lower. If debt is nonrecourse or if the grantee is a person unrelated to the mortgagee or lienor, enter the amount from line 3. This is the amount of consideration to be entered on Form TP-584, Schedule B, Part I, line 1.

Attach a copy of the referee's report of sale, if available.

#### Part II

**Line 6** — If real property is being conveyed to a mortgagee or lienor, or its agent, nominee or an entity wholly owned by the mortgagee or lienor, in lieu of

an action to foreclose a mortgage or lien, enter the unpaid balance of the debt secured by the mortgage or lien. The unpaid balance of the debt includes the principal, interest and other accruals secured by the mortgage or lien.

**Line 7** — Enter the amount of any continuing liens. Do not include the amount of any liens or encumbrances included on line 6.

**Line 8** — Add lines 6 and 7. If debt is **nonrecourse**, skip line 9 and enter the line 8 amount on line 10.

**Line 9** — Where the debt is **recourse**, and the grantee is the mortgagee or lienor, its agent, nominee or an entity wholly owned by the mortgagee or lienor, enter the fair market value of the real property.

**Line 10** — If debt is recourse, enter the amount from line 8 or line 9, whichever is lower. If debt is nonrecourse, enter the amount from line 8.

**Line 11** — Enter any other amount paid by the grantee to the grantor for the real property.

**Line 12** — Add lines 10 and 11. This the amount of consideration to be entered on Form TP-584, Schedule B, Part I, line 1.

#### Part III

**Line 13** — Where the conveyance is to a secured party, or its agent, nominee or an entity owned by the secured party, who is enforcing a lien, security interest or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease(s), enter the unpaid balance of the debt secured by the pledge of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s). The unpaid balance of the debt includes the principal, interest and other accruals secured by the pledge of the shares and/or associated proprietary lease(s).

**Line 14** — Enter the amount of any continuing liens, security interests or other obligations remaining on the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s) after the conveyance. Do not include the amount of any liens, security interests or other obligations included on line 13.

**Line 15** — Add lines 13 and 14. If debt is **nonrecourse**, skip line 16 and enter the line 15 amount on line 17.

**Line 16** — Where the debt is **recourse** and the grantee is the secured party, or its agent, nominee or an entity wholly owned by the secured party, who is enforcing a lien, security interest or other rights on or in shares of stock in a cooperative housing corporation and/or associated proprietary lease(s), enter the fair market value of the shares of stock in the cooperative housing corporation and/or associated proprietary lease(s).

**Line 17** — If debt is recourse, enter the amount from line 15 or line 16, whichever is lower. If debt is nonrecourse, enter the amount from line 15.

**Line 18** — If the conveyance is the original conveyance of shares of stock in a cooperative housing corporation by the cooperative corporation or cooperative plan sponsor, or the subsequent conveyance of stock in a cooperative housing corporation for a unit **other than an individual residential unit**, enter the pro rata portion of the total amount of any liens or encumbrances that remain on the real property of the cooperative housing corporation after the conveyance. The pro rata portion is determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which is the number of shares of stock in the cooperative housing corporation being conveyed in connection with the transfer of the proprietary lease(s) and the denominator is the total number of shares of stock in the cooperative housing corporation.

**Line 19** — Enter any other amount paid by the grantee to the grantor for the conveyance.

**Line 20** — Add lines 17, 18 and 19. This is the amount of consideration to be entered on Form TP-584, Schedule B, Part I, line 1.

#### Part IV

**Line 21** — If the conveyance is to a secured party, or its agent, nominee or an entity owned by the secured party, who is enforcing a lien, security interest or other rights on or in shares of stock, partnership interests or other instruments (i.e., the transfer or acquisition of a controlling interest in an entity with an interest in real property), enter the unpaid balance of the debt secured by the pledge of the ownership interest in the entity. The unpaid balance of the debt includes the principal, interest and other accruals secured by the pledge of the ownership interest.

**Line 22** — Enter the amount of any other liens, security interests or other obligations remaining on the ownership interest in the entity after the conveyance. Do not include the amount of any liens, security interests or other obligations included on line 21.

**Line 23** — Enter the amount of any liens or encumbrances remaining on the real property of the entity multiplied by the percentage in the entity being transferred or acquired.

**Line 24** — Enter the amount of any other debt or obligation of the entity multiplied by the percentage in the entity being transferred or acquired. Do not include the amount of any other debt or obligation of the entity included on line 23.

**Line 25** — Enter any other amount paid by the grantee to the grantor for the conveyance.

**Line 27** — Enter the apportionment of line 26 to the interest in real property owned by the entity. The apportionment is determined by multiplying line 26 by a fraction, the numerator of which is the fair market value of the real property

located in New York State that is owned by the entity and the denominator is the fair market value of all assets owned by the entity.

**Line 28** — Enter the fair market value of the real property as of the date of conveyance multiplied by the percentage in the entity being transferred or acquired.

**Line 29** — Enter the amount from line 27 or line 28, whichever is less. This is the amount of consideration to be entered on Form TP-584, Schedule B, Part I, line 1.

**Schedule F**

Section 1405(b)6 of the Tax Law provides exemption from the real estate transfer tax to the extent a conveyance consists in whole or in part of a mere change of identity or form of ownership or organization where there is no change in beneficial interest.

To determine the consideration for the conveyance, multiply the fair market value of the real property at the time of conveyance by the percentage of interest not subject to the mere change exemption.

Generally, the fair market value of the real property is to be determined by appraisal. It is the amount a willing buyer would pay a willing seller for the real property. It is not the net fair market value, which deducts mortgages on the property from fair market value.

When determining the taxable consideration, the consideration may be reduced by the amount of continuing liens remaining on the property at the time of conveyance multiplied by the percentage of interest not subject to the mere change exemption. Please refer to Page 2 of Form TP-584-I for additional information on the continuing lien deduction.

**Example:** B owns real property with a fair market value of \$2 million. B conveys the property to a partnership in exchange for a 30% interest in the partnership's assets. Although B has conveyed all of the real property to a partnership, he is entitled to a mere change exemption from the tax to the extent of his interest in the partnership. The consideration for the conveyance will be deemed to be \$1,400,000 (\$2,000,000 multiplied by the interest not subject to the mere change exemption).

**Line 30** — Enter the fair market value of the real property at the time of the conveyance. Attach evidence to support the fair market value.

**Line 31** — Enter the percentage that represents the change in beneficial ownership. Round the percentage to four decimal places.

**Line 32** — Multiply line 30 by line 31. This is the consideration for the conveyance. Enter this amount on Form TP-584, Schedule B, Part I, line 1.

**Line 33** — Enter the proportionate amount, if any, of the continuing lien deduction. The proportionate amount of continuing liens means the amount of any continuing lien multiplied by the percentage not subject to the mere change exemption. Enter this amount on Form TP-584, Schedule B, Part I, line 2. A continuing lien is a mortgage or lien on the real property assumed or taken subject to and not an acquisition mortgage or lien placed on the real property by the grantee upon acquisition of the real property. See page 2 of Form TP-584-I for additional criteria that must be met to claim the continuing lien deduction.

**Line 34** — Subtract line 33 from line 32. This is the taxable consideration. Enter this amount on Form TP-584, Schedule B, Part I, line 3.

**Schedule G, Part I**

A grantor will be allowed a credit against the real estate transfer tax on the conveyance of real property, but only to the extent that the tax was paid by the grantor on a prior leasehold grant of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property, by the grantor.

The credit is computed by multiplying the tax paid on the leasehold grant or the granting of the option or contract to purchase by a fraction. The numerator of the fraction is the value of the consideration used to compute the tax previously paid that the grantor will not be entitled to receive after the conveyance of the real property. The denominator is the total value of the consideration used to compute the tax previously paid.

**Example:** Z enters into a lease with Y for a term of 5 years with an option to purchase the real property in any year throughout the term of the lease. The annual rent for the term of the lease is \$50,000. Since this conveyance consists of an option conveyed with use and occupancy, the present value of the rental payments for the term of the lease is subject to transfer tax.

For purposes of this illustration, assume the taxable consideration for the conveyance is \$189,540.

Therefore, at a rate of \$2 for each \$500, or fractional part of the taxable consideration, the transfer tax on the leasehold grant is \$760.

In the second year, Y exercises the option to purchase the real property for \$500,000. The present value of the consideration for the three remaining years of the lease is \$113,040.

The applicable credit and tax on the conveyance of the property is computed as follows:

**a. Credit Computation**

Transfer Tax Paid	×	Value of Consideration Z is not entitled to receive	=	Amount of credit
\$760	×	Taxable Consideration	=	\$453
		\$113,040		
		\$189,530		

**b. Computation of Tax on Conveyance Less Credit**

Consideration Paid by Y	\$500,000
Transfer Tax (\$2 for each \$500 of consideration)	\$2,000
Less credit for tax previously paid	- 453
Total tax due on current conveyance	\$1,547

**Line 35** — Enter the amount of consideration the grantor is not entitled to receive after the conveyance. This amount is the present value of the remaining net rental payments, included in the taxable consideration on the leasehold grant, that will not be received as a result of the present conveyance.

**Line 36** — Enter the amount of the taxable consideration originally used in computing the tax on the leasehold grant.

**Line 37** — Enter the percentage of credit to be applied to the tax on the conveyance of the real property by dividing line 35 by line 36. Round the percentage to four decimal places.

**Line 38** — Enter the amount of transfer tax paid by the grantor on the prior leasehold grant or on the granting of an option or contract to purchase all or a portion of the same real property. Attach a copy of the original Form TP-584 filed and proof of payment.

**Line 39** — Multiply line 37 by line 38. This is the amount of credit to be applied to the tax on the current conveyance. Enter this amount on Form TP-584, Schedule B, Part I, line 5.

**Part II**

A credit will be allowed upon the original conveyances of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, provided the first conveyance of shares of stock takes place within 24 months from the conveyance of the real property to the cooperative housing corporation. The credit is limited to the proportionate part of the tax paid when the real property was conveyed to the cooperative housing corporation, to the extent that the conveyance would have otherwise resulted in a mere change of identity or form of ownership of the property with no change in beneficial ownership.

The credit is determined by multiplying the amount of tax paid upon the conveyance of the real property to the cooperative housing corporation by the percentage that represents the extent to which the conveyance would have resulted in a mere change of identity. The resulting product is then multiplied by a fraction. The numerator is the number of shares of stock conveyed when the proprietary leasehold was granted or transferred; the denominator is the total number of shares of stock of the cooperative housing corporation. In no event will the credit reduce the tax on the conveyance below zero.

**Line 40** — Enter the number of shares allocated to the unit(s) for which proprietary leasehold(s) are being granted.

**Line 41** — Enter the total number of shares of stock in the cooperative housing corporation.

**Line 42** — Divide line 40 by line 41. Round the percentage to four decimal places. This is the percentage of credit to be applied to the tax paid on the conveyance to the cooperative housing corporation.

**Line 43** — Enter the amount of transfer tax paid on the conveyance of the real property to the cooperative housing corporation. Attach a copy of the original TP-584 filed and proof of payment.

**Line 44** — Enter the percentage of interest that would have qualified as a mere change when the real property was conveyed to the cooperative housing corporation. See the instructions for completing Schedule F (this form) for information on a conveyance that would qualify as a mere change of identity. Round the percentage to four decimal places.

**Line 45** — Multiply line 43 by line 44. This is the proportionate amount of the tax paid on the conveyance of the real property to the cooperative housing corporation that would have otherwise qualified as a mere change.

**Line 46** — Multiply line 42 by line 45. This is the amount of credit to be applied to the tax due on the conveyance of the unit(s) for which the proprietary leasehold(s) is being granted. Enter this amount on Form TP-584, Schedule B, Part I, line 5.

**Example:** Taxpayer A conveyed a 100-unit apartment building to a cooperative housing corporation (CHC) on January 1, for a consideration of \$5 million and paid transfer tax of \$20,000 (\$2 for each \$500 of consideration). Taxpayer A receives 1,000 shares from the CHC (10 shares allocated to each unit).

On February 1, Taxpayer A conveys Unit 1A to Taxpayer B for \$100,000.

The credit is computed as follows:

32. Number of shares allocated to the unit conveyed	10
33. Total number of shares of stock in CHC	1,000
34. Percentage of credit to be applied	.0100
35. Tax paid on conveyance to CHC	\$20,000
36. Percentage of interest that would have qualified as a mere change to CHC	100%
37. Proportionate amount of tax paid on conveyance	\$20,000
38. Amount of credit to be applied to tax on conveyance of Unit 1A (\$20,000 x .0100)	\$200

**Information and assistance**

If you need help, call (518) 457-5181; in-state callers with free long distance call 1 888 698-2914.



New York State Department of Taxation and Finance

# Nonresident Real Property Estimated Income Tax Payment Form

# IT-2663

For use on sale or transfer of real property by a nonresident of New York State  
Tax Law — Article 22, Section 663

Submit your completed Form IT-2663 with full payment of estimated tax due, if any, to the recording officer at the time the deed is presented to be recorded. Do not mail Form IT-2663 to the Tax Department.

*For office use only*

Do not use Form IT-2663 for the sale, transfer, or other disposition of shares of stock by a nonresident in a cooperative housing corporation. Use Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*, instead.

**This form is valid for sales or transfers (date of conveyance) after December 31, 2009, but before January 1, 2011.**

- A The transferor/seller is:  an individual  an estate or trust
- B Is the transferor/seller reporting the gain for federal income tax purposes under the installment method? Yes  No   
If Yes, what is the duration of the installment agreement? \_\_\_\_\_ months \_\_\_\_\_ years
- C Mark an X in the box if only a portion of the real property being sold or transferred qualifies as the principal residence of the transferor(s)/seller(s) listed below.

### Part 1 — Sale or transfer information (see Form IT-2663-I, Instructions for Form IT-2663, for assistance)

Transferor/seller name		Transferor/seller identification number (SSN or EIN)			
Spouse's name or name of fiduciary (if applicable)		Spouse's SSN			
Address of transferor/seller (number and street; see instructions)	City	State	ZIP code		
Mailing address of transferor/seller or fiduciary (if different)	City	State	ZIP code		
Location and description of property transferred (include county and tax map number)	Tax map designation			Date of conveyance - -2010	
	Section	Block	Lot		

### Part 2 — Estimated tax information (Complete Worksheet for Part 2 on page 2 before completing this part.)

1 Sale price (from Worksheet for Part 2, line 15) .....	1.		
2 Total gain (from Worksheet for Part 2, line 17; if a loss, enter 0) .....	2.		
3 Estimated tax due (from Worksheet for Part 2, line 20) .....	3.		00

### Part 3 — Nonpayment of estimated tax by a nonresident upon sale of real property (see instructions)

4 This is to certify that the transferor/seller of this property is a nonresident of New York State and is **not** required to pay estimated tax under Tax Law section 663 due to one of the following reasons:

- A  The sale or transfer of this property results in a loss (less than or equal to zero) for federal income tax purposes (you must complete Worksheet for Part 2 on page 2 of this form).
- B  The transferor/seller is not required to recognize any gain or loss with respect to the transfer under provisions of the Internal Revenue Code (IRC) (except for section 121) (you must complete the summary below).

**Brief summary of the transfer** (include the section(s) of the IRC and facts supporting the claim that the recognition of the gain or loss is not required with respect to the sale or transfer):

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### Part 4 — Signature

I, the undersigned, certify that this form including any certification and attachment(s), is to the best of my knowledge and belief, true, correct, and complete.

Signature of transferor/seller	Date	Signature of spouse (if applicable)	Date
--------------------------------	------	-------------------------------------	------

**Worksheet for Part 2**

Use this worksheet to compute your gain or loss on the sale or transfer of the real property. The gain or loss is computed in the same manner as for federal income tax purposes. For more information, see federal Publication 523, *Selling Your*

*Home*; Publication 544, *Sales and Other Dispositions of Assets*; and Publication 551, *Basis of Assets*. These publications are available on the Internal Revenue Service's Web site at [www.irs.gov](http://www.irs.gov).

**Computation of cost or other basis**

5	Purchase price of property.....	5.		
<b>Increases to basis:</b>				
6	Improvements .....	6.		
7	Closing costs .....	7.		
8	Other (explain) <input type="text"/>	8.		
9	Add lines 6, 7, and 8 .....	9.		
10	Add lines 5 and 9 .....	10.		
<b>Decreases to basis:</b>				
11	Depreciation (if applicable) .....	11.		
12	Other (explain) <input type="text"/>	12.		
13	Add lines 11 and 12 .....	13.		
14	Adjusted basis of property (subtract line 13 from line 10) .....	14.		

**Gain or loss**

15	Sale price less selling expenses (enter here and on the front page, Part 2, line 1) .....	15.		
16	Cost or adjusted basis (from line 14 above) .....	16.		
17	Total gain or loss: Subtract line 16 from line 15. If the amount is a gain (greater than zero), enter here, on the front page, Part 2, line 2, and continue with line 18. If the amount is a loss (less than or equal to zero), enter 0 here, on line 20 below, and on the front page, line 2. Complete Part 2, Part 3, and Form IT-2663-V on page 3. ...	17.		

**Estimated tax due**

18	Enter the gain from line 17 (if only a portion of the gain from line 17 is subject to tax, see instructions below) .....	18.		
19	New York State tax rate 8.97% (.0897) .....	19.		.0897
20	Estimated tax due (Multiply line 18 by line 19, and round to the nearest whole dollar; enter here and on the front page, Part 2, line 3. Complete Form IT-2663-V, Nonresident Real Property Estimated Income Tax Payment Voucher, on page 3.)	20.		00

**Specific instructions for Worksheet for Part 2**

**Note:** See Form IT-2663-I, *Instructions for Form IT-2663*, for complete instructions.

**Lines 5 through 17 — Multiple transferors/sellers:** Enter the total purchase price, adjustments to basis, and sale price to determine the total gain (or loss) on the real property. See *Line 18* below for allocation of the gain.

**Line 18 —** Enter the gain (or portion of the gain) from line 17 that will be reported on your federal income tax return for 2010.

- **If only a portion of the property is located inside New York State**, enter the gain allocated to the portion of the property located inside New York State. Attach a statement to Form IT-2663 showing how you computed the allocation.
- **If only a portion of the property qualifies as your principal residence**, enter the gain allocated to the portion of the property that did **not** qualify as your principal residence and will be reported on your federal income tax return for 2010. Attach a statement to Form IT-2663 showing how you computed the allocation.
- **If two or more persons transfer or sell the real property**, allocate the total gain on the property among the

transferors/sellers in the same manner as the gain is allocated for federal income tax purposes. Attach a statement to Form IT-2663 showing each transferor's/seller's name, SSN or EIN, address, and share of the gain.

- **If the gain is being reported as an installment sale**, enter the amount of gain that you (and your spouse, if applicable) will be reporting on your 2010 federal income tax return.
- **A nonresident estate or trust** must enter the amount of the gain, without regard to any distributions, from line 17.

**Line 19 —** When computing tax due on the gain from the transfer or sale of the real property, you must use the tax rate equal to the highest rate of tax for the tax year as set forth in the Tax Law section 601. For tax year 2010 that rate is 8.97% (.0897).

**Line 20 —** This is the amount of your required estimated tax payment. Enter this amount on the front page, Part 2, line 3 and as your estimated tax payment on Form IT-2663-V on page 3. You must complete Form IT-2663-V, even if there is no payment

**Note:** You must complete Form IT-2663-V (below), even if there is no payment of estimated personal income tax due.

***This area is for county clerk use only.***

◀ **Attach check or money order here.**

You must attach a separate check or money order made payable to **NYS Income Tax** for the **full** amount of estimated personal income tax due as shown on Part 2, line 3, and Form IT-2663-V (below).

Do not detach



New York State Department of Taxation and Finance

**Nonresident Real Property Estimated Income Tax Payment Voucher**

For use on sale or transfer of real property by a nonresident

Enter date of conveyance and total payment in the boxes to the right. Print your name, social security number or employer identification number, and **2010 IT-2663** on your payment. Make payable to **NYS Income Tax**.

Identification number (SSN or EIN of the estate or trust)		Mark an <b>X</b> in one box:	
		<input type="checkbox"/> Individual	<input type="checkbox"/> Estate/trust
Individual taxpayer's full name or name of estate or trust			
Spouse's name (if applicable) or name and title of fiduciary		Spouse's SSN	
Individual taxpayer's street address or address of fiduciary or representative (see instructions)			
City, village, or post office		State	ZIP code

**IT-2663-V**

Date fiscal year ends
Date of conveyance

	Dollars	Cents
Total payment		00

829

0431100094



New York State Department of Taxation and Finance

# Nonresident Cooperative Unit Estimated Income Tax Payment Form

# IT-2664

For use on sale or transfer of a cooperative unit by a nonresident of New York State  
Tax Law—Article 22, Section 663

Mail your completed Form IT-2664 together with your Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax* (see Form IT-2664-I, Instructions for Form IT-2664).

For office use only

**This form is valid for sales or transfers (date of conveyance) after December 31, 2009, but before January 1, 2011.**

- A** The transferor/seller is:  an individual  an estate or trust
- B** Is the transferor/seller reporting the gain for federal income tax purposes under the installment method? Yes  No   
If Yes, what is the duration of the installment agreement? \_\_\_\_\_ months \_\_\_\_\_ years
- C** Mark an X in the box if only a portion of the cooperative unit being sold or transferred qualifies as the principal residence of the transferor(s)/seller(s) listed below.

### Part 1 – Sale or transfer information

Transferor/seller name		Transferor/seller identification number (SSN or EIN)	
Spouse's name or name of fiduciary (if applicable)		Spouse's SSN	
Address of transferor/seller (number and street; see instructions)	City	State	ZIP code
Mailing address of transferor/seller or fiduciary (if different)	City	State	ZIP code
Location and description of cooperative unit transferred (include address, unit number, and county)	Tax map designation		Date of conveyance - -2010
	Section	Block Lot	

### Part 2 – Estimated tax information (Complete Worksheet for Part 2 on page 2 before completing this part.)

1 Sale price (from Worksheet for Part 2, line 15) .....	1.		
2 Total gain (from Worksheet for Part 2, line 17; if a loss, enter 0) .....	2.		
3 Estimated tax due (from Worksheet for Part 2, line 20) .....	3.		00

### Part 3 – Nonpayment of estimated tax by a nonresident upon the sale or transfer of a cooperative unit (see instructions)

**4** This is to certify that the transferor/seller of this cooperative unit is a nonresident of New York State and is **not** required to pay estimated tax under Tax Law section 663 due to one of the following reasons:

**A**  The sale or transfer of this cooperative unit results in a loss (less than or equal to zero) for federal income tax purposes (you must complete Worksheet for Part 2 on page 2 of this form).

**B**  The transferor/seller is not required to recognize any gain or loss with respect to the sale or transfer under provisions of the Internal Revenue Code (IRC) (except for section 121) (you must complete the summary below).

**Brief summary of the transfer** (include the section(s) of the IRC and facts supporting the claim that the recognition of the gain or loss is not required with respect to the sale or transfer):


### Part 4 – Signature

I, the undersigned, certify that this form, including any certification and attachment(s), is to the best of my knowledge and belief, true, correct, and complete.

Signature of transferor/seller	Date	Signature of spouse (if applicable)	Date
--------------------------------	------	-------------------------------------	------

**Worksheet for Part 2**

Use this worksheet to compute your gain or loss on the sale or transfer of the cooperative unit. The gain or loss is computed in the same manner as for federal income tax purposes. For more information, see federal Publication 523, *Selling Your Home*;

Publication 544, *Sales and Other Dispositions of Assets*; and Publication 551, *Basis of Assets*. These publications are available on the Internal Revenue Service's Web site at [www.irs.gov](http://www.irs.gov).

**Computation of cost or other basis**

5	Purchase price of stock shares.....	5.		
<b>Increases to basis:</b>				
6	Improvements .....	6.		
7	Closing costs .....	7.		
8	Other ( <i>explain</i> ) <input type="text"/>	8.		
9	Add lines 6, 7, and 8 .....	9.		
10	Add lines 5 and 9 .....	10.		
<b>Decreases to basis:</b>				
11	Depreciation ( <i>if applicable</i> ) .....	11.		
12	Other ( <i>explain</i> ) <input type="text"/>	12.		
13	Add lines 11 and 12 .....	13.		
14	Adjusted basis of stock shares ( <i>subtract line 13 from line 10</i> ) .....	14.		

**Gain or loss**

15	Sale price less selling expenses ( <i>enter here and on the front page, Part 2, line 1</i> ) .....	15.		
16	Cost or adjusted basis ( <i>from line 14 above</i> ) .....	16.		
17	Total gain or loss: Subtract line 16 from line 15. If the amount is a gain (greater than zero), enter here, on the front page, Part 2, line 2, and continue with line 18. If the amount is a loss (less than or equal to zero), enter 0 here, on line 20 below, and on the front page, line 2. Complete Part 2, Part 3, and Form IT-2664-V on page 3.	17.		

**Estimated tax due**

18	Enter the gain from line 17 ( <i>if only a portion of the gain from line 17 is subject to tax, see instructions below</i> )	18.		
19	New York State tax rate 8.97% (.0897) .....	19.		.0897
20	Estimated tax due ( <i>Multiply line 18 by line 19, and round to the nearest whole dollar; enter here and on the front page, Part 2, line 3. Complete Form IT-2664-V, Nonresident Cooperative Unit Estimated Income Tax Payment Voucher, on page 3.</i> )	20.		00

**Specific instructions for Worksheet for Part 2**

**Note:** See Form IT-2664-I, *Instructions for Form IT-2664*, for complete instructions.

**Lines 5 through 17 — Multiple transferors/sellers:** Enter the total purchase price, adjustments to basis, and sale price to determine the total gain (or loss). See *Line 18* below for allocation of the gain.

**Line 5 —** Your purchase price of stock shares in a cooperative unit is usually the cost of stock in the cooperative housing corporation, which may include your share of a mortgage on the building owned by the cooperative housing corporation on the date of the purchase of stock interest, if such portion is properly allocable to your cooperative unit and must be paid as a condition of retaining your stock interest in the cooperative housing corporation. This amount must be computed in the same manner as for federal income tax purposes.

**Line 18 —** Enter the gain (or portion of the gain) from line 17 that will be reported on your federal income tax return for 2010.

• **If only a portion of the cooperative unit qualifies as your principal residence,** enter the gain allocated to the portion of the cooperative unit that did **not** qualify as your principal residence and will be reported on your federal income tax return for 2010. Attach a statement to Form IT-2664 showing how you computed the allocation.

• **If two or more persons transfer or sell the cooperative unit,** allocate the total gain on the cooperative unit among the transferors/sellers in the same manner as the gain is allocated for federal income tax purposes. Attach a statement to Form IT-2664 showing each transferor's/seller's name, SSN or EIN, address, and share of the gain.

• **If the gain is being reported as an installment sale,** enter the amount of gain that you (and your spouse, if applicable) will be reporting on your 2010 federal income tax return.

• **A nonresident estate or trust** must enter the amount of the gain, without regard to any distributions, from line 17.

**Line 19 —** When computing tax due on the gain from the transfer or sale of the cooperative unit, you must use the tax rate equal to the highest rate of tax for the tax year as set forth in the Tax Law, section 601. For tax year 2010 that rate is 8.97% (.0897).

**Line 20 —** This is the amount of your required estimated tax payment. Enter this amount on the front page, Part 2, line 3, and as your estimated tax payment on Form IT-2664-V on page 3. You must complete Form IT-2664-V, even if there is no payment of estimated personal income tax due.

**Note:** You must complete Form IT-2664-V (below), even if there is no payment of estimated personal income tax due.

**Estimated income tax payment information**

Print your name, SSN or EIN, and **2010 IT-2664-V** on your payment. You must remit the full payment of estimated income tax as shown on Form IT-2664, line 3 without regard to any prior credits or payments of estimated tax for the tax year. Make your check or money order payable to **NYS Income Tax**. Do not combine this payment with payment of any other tax or fee; it must be a separate check or money order. **Do not detach this voucher from the rest of the form.**

Mail your completed Form IT-2664 (with a check or money order for the full payment of any estimated income tax due) and your Form TP-584 (with a **separate** check or money order for the real estate transfer tax shown as due on Form TP-584) to the NYS Tax Department at the address below within 15 days of the delivery of the instrument effecting the disposition.

**NYS TAX DEPARTMENT  
RETT RETURN PROCESSING  
PO BOX 5045  
ALBANY NY 12205-5045**

**Private delivery services**

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services*. See *Need help?* in the instructions, *Form IT-2664-I*, for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery. If you use **any** private delivery service, whether it is a designated service or not, send the forms covered by these instructions to: NYS Tax Department, Deposit Resolution Unit, W A Harriman Campus, Albany NY 12227.

**◆ Attach check or money order here.**

You must attach a separate check or money order made payable to **NYS Income Tax** for the full amount of estimated personal income tax due as shown on Part 2, line 3, and Form IT-2664-V (below).

Do not detach



New York State Department of Taxation and Finance  
**Nonresident Cooperative Unit Estimated Income Tax Payment Voucher**  
For use on sale or transfer of a cooperative unit by a nonresident

Enter date of conveyance and total payment in the boxes to the right. Print your name, social security number or employer identification number, and **2010 IT-2664** on your payment. Make payable to **NYS Income Tax**.

**IT-2664-V**

Date fiscal year ends
Date of conveyance

Identification number (SSN or EIN of an estate or trust)	Mark an <b>X</b> in one box:	
	<input type="checkbox"/> Individual	<input type="checkbox"/> Estate/trust
Individual taxpayer's full name or name of estate or trust		
Spouse's name (if applicable) or name and title of fiduciary	Spouse's SSN	
Individual taxpayer's street address or address of fiduciary or representative (see instructions)		
City, village, or post office	State	ZIP code

Dollars                      Cents

Total payment  .  **00**





Department of  
Housing Preservation  
& Development  
nyc.gov/hpd

THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

AFFIDAVIT IN LIEU OF REGISTRATION STATEMENT

County of \_\_\_\_\_ ) SS.:

State of New York )

\_\_\_\_\_, being duly sworn, deposes and says:

1) I am personally familiar with the real property known by the street address of (insert street address):  
\_\_\_\_\_ Block \_\_\_\_\_, Lot \_\_\_\_\_,  
and make this Affidavit as (describe capacity in which affidavit is made) \_\_\_\_\_  
in connection with a deed/lease/memorandum of lease (delete inapplicable description) which transfers an  
interest in the above real property, that is dated \_\_\_\_\_, and is  
between \_\_\_\_\_ and \_\_\_\_\_.

2) The statements made in the Affidavit are true of my own knowledge, and I submit this Affidavit in order  
that this Instrument be accepted for recording without being accompanied by a registration statement, as  
such is defined by Article 2 of Subchapter 4 of Chapter 2 of Title 27 of the Administrative Code of the  
City of New York.

3) Exemption from registration is claimed because the Instrument affects neither (a) an entire multiple  
dwelling as such is defined by §27-2004(a)(7) of Article 1 of Subchapter 1, of Chapter 2 of Title 27 of the  
Administrative Code of the City of New York and New York State Multiple Dwelling Law §4(7) nor (b)  
a private dwelling as such is defined by §27-2004 (a) (4) of Article 1 of Subchapter 1 of Chapter 2 of  
Title 27 of the Administrative Code of the City of New York and of the New York State Multiple  
Dwelling Law §4(6) that is required to register pursuant to, Article 2 of Subchapter 4 of Chapter 2 of Title  
27 of the Administrative Code of the City of New York. The Instrument does not affect a multiple  
dwelling because it affects the following (check applicable item):

- a commercial building
- a one-or two family dwelling whose owner or a family member resides in the dwelling
- a condominium unit in a multiple dwelling
- cooperative corporation shares relating to a single residential unit in a multiple dwelling
- mineral, gas, water, air or other similar rights not affecting a multiple dwelling
- lease of commercial space in a multiple dwelling
- vacant land

4) I am aware that this Affidavit is required by law to be submitted in order that the Instrument be recorded  
or accepted for recording without being accompanied by a registration statement. I am aware that any  
false statements made in this Affidavit may be punishable as a felony or misdemeanor under Penal Law  
Article 210 or as an offense under Administrative Code of the City of New York §10-154.

Sworn To Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2009

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone #



**FAQs**  
**Regarding the**  
**Additional Tax**  
**on Transfers**  
**of Residential**  
**Real Property**  
**for \$1 Million**  
**or More**

## Table of contents

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NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

## Introduction

Tax Law Article 31 imposes a real estate transfer tax on each conveyance of real property, or interest in real property, when the consideration exceeds \$500. The tax is computed at a rate of two dollars for each \$500 of consideration, or for any fractional part of \$500. An additional tax is imposed on each conveyance of real property or interest in real property used in whole or in part as a personal residence when the consideration for the entire conveyance is \$1 million or more. The additional tax is computed at a rate of one percent of the consideration, or part of the consideration, attributable to the residential real property. This publication answers frequently asked questions related to the *additional tax*, often referred to as the *mansion tax*.

The information presented in this publication does not represent a change in any policies or procedures, but provides guidance for the relevant provisions of Tax Law Article 31 and Part 575 of the Real Estate Transfer Tax Regulations (20 NYCRR). **Unless otherwise noted in the following examples, the real estate transfer tax applies to each conveyance whether or not the additional tax is due.** Although accurate, the information in this publication has been simplified; if there is any discrepancy between this publication and the Tax Law or regulations, the Tax Law and regulations will govern.

## Definitions

The following terms used in this publication are derived from definitions contained in Tax Law Article 31, or section 575.1 of the New York State Real Estate Transfer Tax Regulations. As necessary, they have been edited to apply specifically to the additional tax.

*Real property* - means every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, that are located in whole or in part within the state of New York. Real property does not include rights to sepulture.

*Interest in real property* - includes title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to the use or occupancy of real property, or the right to receive rents, profits or other income derived from real property. It also includes an option or contract to purchase real property. It does not include a right of first refusal to purchase real property.

*Consideration* - is the price actually paid or required to be paid for the real property, or interest in the real property, including the payment for an option or contract to purchase real property, whether or not expressed in the deed, and whether paid or required to be paid

by money, property, or any other thing of value. It includes the cancellation or discharge of an indebtedness or obligation. It also includes the amount of any mortgage, purchase money mortgage, lien, or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

In the case of (i) the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor and (ii) the subsequent conveyance by the owner thereof of the stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration will include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings.

*Conveyance* - means the transfer or transfers of any interest in real property by any method, including but not limited to the sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property includes the creation of a leasehold or sublease only where (a) the sum of the term of the lease or sublease and any options for renewal exceeds forty-nine years, (b) substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and (c) the lease or sublease is for substantially all of the premises constituting the real property. Conveyance of real property will not include a conveyance pursuant to devise, bequest or inheritance; the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to the tax law or the internal revenue code.

*Grantor* - means the person making the conveyance of the real property or interest therein.

*Grantee* - means the person who obtains real property or interest therein as a result of a conveyance.

## Frequently asked questions

1) **Q:** What is the additional tax?

**A:** In addition to the real estate transfer tax imposed by section 1402 of the Tax Law on the conveyance of real property or interest in real property, Tax Law section 1402-a imposes an *additional tax* on each conveyance of residential real property or interest in residential real property when the consideration for the entire conveyance is \$1 million or more.

2) **Q:** Do all the provisions of the real estate transfer tax apply to the additional tax?

**A:** Generally, all of the provisions of the real estate transfer tax apply to the additional tax, except as described later in this publication (see questions 5 and 16).

3) **Q:** When is the additional tax due?

**A:** The additional tax must be paid at the same time as the real estate transfer tax imposed by section 1402 of the Tax Law. The taxes are paid by filing Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*, **no later than the fifteenth day after the delivery of the instrument effecting the conveyance.**

4) **Q:** What is the rate of the additional tax?

**A:** The rate of the additional tax is one percent of the consideration, or part of the consideration, attributable to the residential real property.

5) **Q:** Who is liable for paying the additional tax?

**A:** The grantee is liable for and must pay the additional tax.

6) **Q:** What is meant by *residential real property*?

**A:** *Residential real property* means any premises that is or may be used in whole or in part as a personal residence at the time of conveyance, and includes a one-, two-, or three-family house, an individual condominium, or a cooperative apartment unit.

**Example:** *A building containing ten apartments sells for \$1.5 million. The grantor used one of the apartments as a personal residence. This conveyance is not subject to the additional tax since the real property conveyed is not a one-, two-, or three-family house, an individual condominium unit or a cooperative apartment unit.*

**Example:** *A structure contains a store on the first level with three apartments above it. Since there are four units (the store and three apartments), the structure would not be considered a three-family house for the purposes of the additional tax.*

7) **Q:** Does residential real property include premises that have not been occupied by the grantor?

**A:** Yes. Residential real property includes a one-, two- or three-family house, condominium unit, or cooperative apartment unit that is (or may be) rented to others for use as a residence.

**Example:** *A three-family house sells for \$1.2 million. The grantor did not occupy any portion of the house. The grantee is required to pay additional tax of \$12,000 (\$1.2 million x .01). The result would be the same if the grantor had occupied any portion of the house.*

8) **Q:** Does residential real property include a seasonal or part-time residence?

**A:** Yes. A seasonal or part-time residence is residential real property.

**Example:** *A woman owns a summer cottage in Lake George, New York, that she occupies only during the month of July each year. When she is not using the cottage, she may rent it to others on a temporary basis or it may remain vacant. She sells the cottage for \$1.5 million. The conveyance is subject to the additional tax.*

**Example:** *A man owns a house in Philadelphia and a condominium in New York City. He uses the condominium as a residence several days a week while on business. He sells the condominium for \$1.4 million. The conveyance is subject to the additional tax.*

9) **Q:** How is the additional tax applied if only part of the premises is used for residential purposes?

**A:** The consideration for the entire conveyance of the real property must be taken into account when determining whether the consideration is \$1 million or more. If it is, the taxable consideration is computed based on the value of the residential portion.

**Example:** *One unit of a two-family house is used for residential purposes, and the other unit is used for commercial purposes as a retail store. The owner sells the house for \$1.5 million. The residential unit is valued at \$500,000 while the retail unit is valued at \$1 million. In determining whether the consideration for the conveyance is \$1 million or more, the consideration for the entire conveyance must be taken into account. In this case, the consideration for the entire conveyance (\$1.5 million) exceeds \$1 million. Therefore, the conveyance is subject to the additional tax but only on the value of the residential unit (\$500,000).*

10) **Q:** When a one-, two-, or three-family house is sold, does all of the abutting land qualify as residential real property?

**A:** Residential real property includes the land on which the house is located and the land abutting the house unless the abutting land is used for a nonresidential purpose.

**Example:** *Grantor A enters into a contract to sell a parcel improved by a one-family house to Grantee B for \$900,000. Simultaneously, Grantor A contracts with Grantee B to sell an adjacent parcel of vacant land for \$300,000. The timing and terms of the contracts indicate that the conveyances are related. Prior to the conveyance, the abutting parcel was kept vacant. Both*



*parcels are used in conjunction with each other and are considered residential real property. Accordingly, the consideration for the entire conveyance of \$1.2 million is subject to the additional tax. The grantee must pay an additional tax of \$12,000 (\$1.2 million x .01).*

11) **Q:** When are ancillary structures considered part of the residential real property?

**A:** Ancillary structures are considered part of the residential real property when the structures are used in conjunction with, or are clearly related to, the main residential structure.

**Example:** *A 10-acre parcel is divided into three tax lots for real property tax purposes. Lot 1 contains the main house and a detached three-car garage located on one acre of land. Lot 2 contains a guest cottage located on half an acre of land some distance from the main house. Lot 3 is vacant land. The entire parcel is conveyed to one grantee for \$2 million. The lot with the main house and the garage is valued at \$995,000, the guest cottage is valued at \$405,000, and the abutting land is valued at \$600,000. None of the lots are used for anything other than residential purposes and the ancillary structures and abutting land are all used in conjunction with each other. Therefore, since the consideration received for all the structures and abutting land is \$1 million or more, the conveyance is subject to the additional tax. The grantee must pay an additional tax of \$20,000 (\$2 million x .01).*

12) **Q:** How does the additional tax apply to the conveyance of multiple condominium units or cooperative apartments?

**A:** Regardless of the number of contracts used to effectuate the conveyance, the conveyance of multiple condominium units or cooperative apartments to one grantee or related grantees will be treated as a single conveyance of residential real property only if the units are used in conjunction with one another or there is a clear relationship between each unit or apartment.

**Example:** *The sponsor of a cooperative project conveys two individual cooperative apartments to one grantee. The apartments are adjacent, but **not connected** to one another, and are not used in conjunction with one another. The purchase price of each apartment is treated separately in determining whether the \$1 million threshold for imposing the additional tax is met.*

**Example:** *Individual A conveys two condominium apartments to Individual B for a total purchase price of \$1.2 million. The two apartments have been used by Individual A as his residence and have been combined through certain alterations to accommodate Individual A (e.g., walls removed between apartments, stairway built connecting to the apartment above, etc.). Regardless of the number of deeds or contracts used to effectuate the conveyance, since the condominium apartments have been connected and used as a single residence, the total consideration of \$1.2 million paid for the condominium apartments would be subject to the additional tax.*

**Example:** *Individual X conveys three condominium units to Individual Y for \$1 million. One unit is an apartment located on the 20th floor of the building. The second unit is a storage room located in the basement. The third unit is a parking space located in the parking garage. Since*

*all three condominium units are used in conjunction with one another, they comprise one residential unit and the additional tax applies to the total purchase price.*

13) **Q:** Does residential real property include property that the grantee intends to convert to commercial property after conveyance?

**A:** Yes. Residential real property includes any one-, two-, or three-family house, an individual condominium unit, or a cooperative apartment that is used (or may be used) in whole or in part as a personal residence **at the time of conveyance.**

**Example:** *A grantor contracts to sell a two-family house for \$1 million. The grantee intends to convert the house into two offices. The grantee must pay the additional tax of \$10,000 (\$1 million x .01) because the property may be used as residential real property at the time of conveyance. After purchasing the property, the grantee converts and uses it as offices. The conversion includes remodeling the kitchen and bathrooms in a configuration suitable for commercial use, and installing cables and hardware to support an electronic telecommunications network. He later sells the property for \$1.1 million. No additional tax is due on the subsequent sale because the property had been converted and used as an office and is no longer suitable as residential real property at the time of conveyance.*

14) **Q:** Does the additional tax apply to the transfer or acquisition of a controlling interest in an entity that owns residential real property?

**A:** Yes. The additional tax applies to the transfer or acquisition of a controlling interest in an entity that owns residential real property with a fair market value of \$1 million or more.

**Example:** *Individual S owns 100% of the membership interest in a limited liability company (LLC). The only asset owned by the LLC is a single-family home located in Southampton, New York. The residence has a fair market value of \$1.5 million. S has used the home as a summer residence, and has also rented it to others. S transfers his 100% interest in the LLC to Individual T for \$1.5 million. The grantee (Individual T) is required to pay additional tax of \$15,000 (\$1.5 million x .01).*

For more information on the transfer or acquisition of a controlling interest, see **Publication 576, Transfer or Acquisition of a Controlling Interest in an Entity with an Interest in Real Property.**

15) **Q:** Does the additional tax apply to a conveyance of residential real property to a governmental entity?

**A:** No. The additional tax does not apply to the conveyance of residential real property to any of the following governmental entities:

- the state of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created in agreement with another state or the Dominion of Canada);

- the United States of America or any of its agencies and instrumentalities; and
- the United Nations.

**Example:** *R conveys residential real property to the New York State Department of Environmental Conservation for \$2 million. This conveyance is not subject to the additional tax. In addition, the conveyance will not be subject to the transfer tax imposed by section 1402 of the Tax Law.*

16) **Q:** Is the consideration paid for the residential real property reduced by the amount of any continuing lien remaining on the property?

**A:** For the purposes of the real estate transfer tax imposed by Tax Law section 1402 with respect to a) the conveyance of a one-, two-, or three-family house and an individual residential condominium unit, and b) conveyances when the consideration is less than \$500,000, consideration for the interest conveyed excludes the value of any lien or encumbrance remaining on the property at the time of conveyance. **This continuing lien deduction does not apply for the purposes of computing the additional tax imposed by Tax Law section 1402-a.**

**Example:** *An individual residential condominium unit is sold for \$1 million. The grantee assumes an existing \$400,000 mortgage and pays \$600,000 in cash. For purposes of the additional tax, the grantee must pay the tax based upon the consideration of \$1 million since no continuing lien exclusion is allowed for the \$400,000 mortgage. However, for purposes of the transfer tax, the grantor will only pay the tax on the \$600,000.*

For special rules regarding the computation of consideration for conveyances of interests in a cooperative housing corporation, see the definition of consideration on page 1.

17) **Q:** Is the amount of the consideration received by the grantor reduced when the grantor pays the additional tax on behalf of the grantee?

**A:** No. The payment of the additional tax by the grantor on behalf of the grantee is considered to be an expense of the conveyance of the property. Therefore, the consideration received by the grantor cannot be reduced by the amount of additional tax paid by the grantor.

18) **Q:** Is the amount of the consideration increased when the grantee pays the transfer tax or other expenses on behalf of the grantor?

**A:** Yes. Where the grantee agrees to pay the transfer tax or any other expense required to be paid by the grantor as a condition of the sale, the consideration for both the transfer tax and the additional tax is increased when computing the taxes due.

**Example:** *Grantor A retains a lawyer to represent her regarding a conveyance of residential real property to Grantee B. However, it is agreed that Grantee B will pay Grantor A's legal fees related to the closing. This payment represents a discharge of a debt or obligation of the grantor*

and would be additional consideration. This is true in any case in which the grantee agrees or is directed to pay a debt the grantor owes in connection with the conveyance of real property.

**Example:** Individual A contracts to sell his single-family residence to Individual B for \$975,000. Individual B agrees to pay the real estate brokerage fee obligation incurred by Individual A in the amount of \$58,500. Since Individual B is paying an obligation on behalf of Individual A, the consideration for the conveyance is deemed to be \$1,033,500 (\$975,000 + \$58,000). Therefore, the conveyance is subject to the additional tax in the amount of \$10,335 (\$1,033,500 x .01).

**Example:** A one-family house, which is the grantor's residence, is sold for \$2 million. There are no liens or other encumbrances on the property at the time of conveyance. The sales contract provides that the grantee will pay the transfer tax for the grantor. The grantee would compute the **transfer tax** as follows:

$$\begin{aligned} \$2,000,000 \div \$500 &= 4,000 \times \$2 = \$8,000 \\ \$2,008,000 \div \$500 &= 4,016 \times \$2 = \$8,032 = \text{transfer tax due.} \end{aligned}$$

Compute the **additional tax** as follows:

Consideration	\$2,008,000
Tax rate of 1%	x .01
Additional tax due =	\$ 20,080

19) **Q:** How is the consideration determined for purposes of the additional tax when the residential real property is sold by related parties?

**A:** When the grantors are related to each other, the consideration paid to each grantor must be added together to determine if the consideration for the entire conveyance is \$1 million or more. The relationship of the grantor and grantee is determined by the facts and circumstances of the transaction.

**Example:** T and C each own residential real property as tenants in common. T enters into a contract to sell his 50% interest to P for \$500,000. Concurrently, C enters into a separate contract to sell her interest to P for \$500,000. At the closing, P receives separate deeds for the conveyance of T's interest and the conveyance of C's interest. Since T and C are related as tenants in common and the timing of the contracts of sale indicate that the conveyances to P are related, the separate deed transfers are treated as a single conveyance. Since the consideration is \$1 million, the conveyance is subject to the additional tax.

20) **Q:** How is the consideration determined if a contract to purchase residential real property is assigned to a third-party?

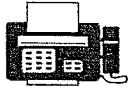
**A:** To determine if the consideration is \$1 million or more, the consideration for the contract to purchase residential real property must be considered separately from the consideration paid for the assignment.

**Example:** *A enters into a contract to sell residential real property to B for \$900,000. B assigns the purchase contract to C for an assignment price of \$200,000. At closing, C pays a total consideration of \$1.1 million. As long as there is no relationship between A, B or C and the transactions were not structured to avoid the tax, the closing of the purchase contract and assignment are treated as two separate conveyances. Since the consideration for each conveyance is less than \$1 million, the additional tax does not apply.*

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