

CHICAGO TITLE INSURANCE COMPANY
TICOR TITLE INSURANCE COMPANY

JULY 10, 2006

NOTICE TO CUSTOMERS

"Mansion Tax" Amended

I. Background. The Legislature has enacted P.L. 2006, c. _____ (A4701 / S1982), effective August 1, 2006, which amends the so-called mansion tax imposed under the Realty Transfer Fee law, NJSA 46:15-5 *et seq.* The bill forms a part of the revenue portion of the budget for Fiscal Year 2007. By way of background, the mansion tax, which is imposed on the grantee, was first created in 2004 by the enactment of N.J.S.A. 46:15-7.2. In its original form, the tax applied where the land conveyed was "...zoned for residential use...for consideration in excess of \$1,000,000.00". In February, 2005, the law was amended to state that the tax applies where the property is classified under the Administrative Code as Class 2 ("residential") or Class 3A ("farm property (regular)"), but only if the land contains a building or structure suited for residential use. See N.J.A.C. 18:12-2.2. The rate of tax is one (1%) per cent of the consideration, and is paid at the time of recording.

II. Class 4A Taxation. As a result of the enactment of P.L. 2006, c. _____ (A4701 / S1982), the tax will also be applied to property classified as Class 4A ("commercial properties"), in addition to Classes 2 and 3A. The rate of tax is the same; *i.e.*, one (1%) per cent, and it is applicable where the consideration exceeds \$1,000,000.00. N.J.A.C. 18:12-2.2 defines Class 4A as "any other type of income-producing property other than property in classes 1, 2, 3A, 3B and those classes included in classes 4B and 4C". Class 1 is vacant land. Classes 2 and 3A are discussed above. Class 3B is farm property subject to the Farmland Assessment Act. Class 4B is "industrial properties" and Class 4C is "apartments designed for the use ... of five families or more".

III. "Controlling Interest" Taxation. In addition, the tax is to be imposed "...upon the sale or transfer for consideration in excess of \$1,000,000 of a controlling interest in an entity which possesses, directly or indirectly, an interest in [Class 4A] real property. "Controlling interest" means ownership of greater than 50% of the stock or beneficial interests in the entity. If the sale of the controlling interest occurs through a series of transactions (occurring within six months of each other), they are presumed to constitute a single transaction for tax purposes. The tax is imposed on the purchaser at the same rate (1%). The tax is collected through the filing of a tax return, which must be filed by the last day of the month following the month in which the sale or transfer occurs. Certain exemptions are set forth in the statute, including conveyances by or to a governmental entity; purchases by non-profit institutions; and transactions "having the underlying characteristics" of those set forth in NJSA 46:15-10 (*i.e.*, those exempt from the RTF imposed on the grantor). Since (by definition) no deed is recorded in connection with a sale or transfer of this nature, no title issue *per se* is presented by this portion of the new law.

Notice to Customers – "Mansion Tax" Amended (07/10/06)
Page 2.

IV. RTF Forms. The text of the statute suggests that additional RTF forms must be submitted in connection with the tax. It is currently unclear if the existing **RTF-1EE** will be revised to reflect Class 4A taxation, or if a new form or forms will be created by the Treasury Department in the future. Once the new or revised forms have been prepared, the same will be distributed.

V. Effective Date. As noted above, the law takes effect on **August 1** and applies to transfers of real property on or after that date. Thus, **deeds recorded before August 1 will not be subject to the new tax.** It is presently unclear if deeds submitted for recording *before* August 1 will be exempt if not actually recorded until *after* August 1. Furthermore, in cases where a contract of sale for Class 4A property was fully executed prior to **July 1, 2006**, the purchaser is entitled to a refund, provided the deed is recorded by **November 15, 2006**.

This NOTICE has been prepared as a courtesy, and is not intended as a legal opinion. Although every effort has been made to ensure that the information contained herein is as accurate and up-to-date as possible, customers must contact the county clerk or register or Treasury Department to request advice as to the requirements for specific transactions. Customers may also wish to consult the Treasury Department website: www.state.nj.us/treasury/taxation. The text of A4701 / S1982 may be found on the Legislature's website: www.njleg.state.nj.us. As more information becomes available, this NOTICE may be supplemented or revised to reflect the same.