



UNDERWRITING BULLETIN 2007-06

An information bulletin for the agents of Commonwealth Land Title Insurance Company

TO: ALL AGENTS, COUNSEL, MANAGERS, CLEARANCE
PERSONNEL AND CLOSERS

FROM: JANICE M. MORELLI, VICE PRESIDENT and COUNSEL

SUBJECT: TOWN OF WARWICK, ORANGE COUNTY, NEW YORK:
REAL ESTATE TRANSFER TAX – EFFECTIVE APRIL 1, 2007

DATE: March 23, 2007

Effective for transfers occurring on or after April 1, 2007, there will be a Transfer Tax of .75% (¾%) on all conveyances of real property (and transfers or acquisitions of controlling interests in entities that have an interest in real property) located in the Town of Warwick, Orange County, New York, where the consideration exceeds \$500 (the Tax).

This Tax is pursuant to new Article 31-F (Sections 1449-aaaa through 1499-oooo) of the New York State Tax Law, pursuant to which the Town of Warwick was authorized to, and did, impose a transfer tax for the purpose of funding a Community Preservation Fund to preserve open space, and agricultural and historic places within the Town.

Many of the definitions of terms and many provisions of Article 31-F are similar to the definitions and provisions contained in Article 31 dealing with the New York State Real Estate Transfer Tax.

An important difference between the Town of Warwick Transfer Tax and the NYS Transfer Tax is that, like the Peconic Bay Transfer Tax (Article 31-D of the Tax Law), the **grantee** pays the Town of Warwick Transfer Tax. Other differences will be discussed below.

Imposition of the Tax:

The Tax applies to all conveyances occurring on or after April 1, 2007, “but shall not apply to conveyances made pursuant to binding *written* contracts entered into prior to such date, provided that the date of the contract can be confirmed by independent evidence such as the recording of the contract, payment of the deposit, or such other facts as determined by the Treasurer of Orange County.” (Section 1449-bbbb)

It is worth noting here that there was a similar “grandfathering” provision when the NYS Transfer Tax was amended in 1989, but the Commissioner of Taxation found that amendment of the contract after the effective date caused a loss of the “grandfathering” exclusion.

Payment of the Tax and Filing of the Transfer Tax Return

The Tax is to be paid to the County Clerk of Orange County. The Tax shall be paid at the same time as the NYS Real Estate Transfer Tax is required to be paid (**Section 1449-cccc**). In addition a filing fee of \$5.00 is required to be paid. **The tax return must be signed by the Grantor(s) and Grantee(s).**

The Transfer Tax Return is posted on the Town of Warwick Website at:
<http://www.townofwarwick.org/Residents/Town Hall/ CPP Tax Form.pdf>

Exemptions

The exemptions provided for under the Warwick Transfer Tax in Section 1449-eeee of Article 31-Fof the Tax Law, and set out in the transfer tax return attached for your reference, parallel the exemptions set out in the NYS Transfer Tax under Article 31, Section 1405 of the Tax Law, with certain exceptions.

You will note that exemptions listed in Schedule B Part II “a” through “i” are the same as those contained in Part III “a” through “i” of the TP-584. (The NYS Transfer Tax Return)

Exemptions “j” through “o” have no corresponding exemption on the TP-584.

Other differences worth noting are that there is no continuing lien deduction; no reduced tax for REITS; and there is an “allowance” against the purchase price of \$100,000 for improved land and \$50,000 for unimproved land. (See Schedule B: Part 1 – Line 2a). Additionally, options to purchase and contracts of sale with the use or occupancy of the property appear to be taxable regardless of amount of consideration or type of property. (Compare to Exemption “j” on the TP-584.)

If an exemption from tax is claimed on Schedule B, Part II of the return, the Tax Return provides that the Town Attorney, or his/her designee, is required to approve the exemption and sign the Return on page 2. **Because the County Clerk will not accept the Town of Warwick Transfer Tax Return on which an exemption is claimed without the signature of the Town Attorney or his/her designee, no title may close if a Town of Warwick Transfer Tax return is tendered which claims an exemption, AND WHICH THE TOWN ATTORNEY OR HIS/HER DESIGNEE HAS NOT SIGNED THE REQUIRED APPROVAL ON THE RETRUN. The required approval must be obtained prior to closing.**

To avoid an adjournment of the closing, we suggest that you raise the following exception when the property to be insured is wholly or partially within the Town of Warwick:

“If an exemption will be claimed on page 2 of the Town of Warwick Transfer Tax return, title may not close unless, PRIOR TO CLOSING, the Town Attorney or his or her designee has approved the exemption as evidenced by his/her signature on page 2 of the Tax Return.”

Apportionment

Tax Law section 1449-mmmm provides for the apportionment of the Tax whenever real property is situated partly within and partially without the Town of Warwick.

If you have any questions regarding this topic, please call counsel at Commonwealth Land Title Insurance Company.