

**TOWN OF SNOWMASS VILLAGE
TOWN COUNCIL**

**ORDINANCE NO. 14
SERIES OF 2010**

AN EMERGENCY ORDINANCE AMENDING SECTION 4-95 OF THE SNOWMASS VILLAGE MUNICIPAL CODE TO CLARIFY THE EXEMPTION TO THE SNOWMASS VILLAGE REAL ESTATE TRANSFER TAX CREATED IN SECTION 4-95 SUBSECTION 14.

WHEREAS, the Town Council has become aware of the possibility of differing interpretations of certain exemptions to the Snowmass Village Real Estate Transfer Tax; and

WHEREAS, the Town Council desires to clarify the interpretation of Section 4-95(14) of the Snowmass Village Municipal Code; and

WHEREAS, the Town Council; and

WHEREAS, the Town Council believes that purchasing a note, Certificate of Purchase or other indicia of ownership in order to obtain ownership is a transfer of real property for "consideration" that should not be exempt; and

WHEREAS, in order that the current language of Section 4-95(14) can clearly convey the extent of the exemption provided by the Section, the Town Council finds that the language should be amended to clarify the extent and circumstances under which said exemption can be claimed; and

WHEREAS, the Town Council finds that because of the differing interpretations regarding the exemption, together with the plethora of foreclosure actions in the uncertain economic climate the Town is currently experiencing could result in irreparable harm to public infrastructure and institutions such that urgency and need requiring the immediate adoption of this Ordinance exist and that immediate adoption of the Ordinance is necessary for the preservation of public property, health, welfare, peace and safety.

NOW, THEREFORE, BE IT ORDAINED, by the Town Council of the Town of Snowmass Village, as follows:

1. Section 4-95 Exemptions. The provisions of Section 4-95 of the Municipal Code are hereby amended and restated, as follows:

Sec. 4-95. Exemptions.

The land transfer tax imposed by this Article shall not apply to:

- (1) Any transfer wherein the United States, or any agency or instrumentality thereof, the State, any county, city and county, municipality, special district or other political subdivision of the State, is either the grantor or grantee.
- (2) Any transfer by gift of real property, where there is no consideration other than love and affection or charitable donation.
- (3) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in property; however, if additional consideration of value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.
- (4) Any transfer of title or change of interest in real property by reason of death, pursuant to a will, the law of descent and distribution, or otherwise.
- (5) Transfers made pursuant to reorganization, merger or consolidation of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock, or transfers made to or from a corporation, partnership, limited partnership, joint venture, business trust or other association or organization if that association or organization is owned by the persons by or to whom such transfer was made, and if such persons will have the same relative interests either in the association or organization or in the real property immediately before and after said transfer, and if there is no consideration other than their respective interests in the new association or organization or in the property.
- (6) Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Code or in any equity receivership proceeding.
- (7) Any transfer made and delivered without consideration for the purpose of:

confirming, correcting, modifying or supplementing a transfer previously made; making minor boundary adjustments; removing clouds on titles; or granting easements, rights-of-way or licenses.

- (8) Any decree or order of a court of record quieting, determining or resting title, except for a decree of foreclosure, including a final order awarding title pursuant to a condemnation proceeding.
- (9) Any transfer of cemetery lots.
- (10) Any lease of any real property (or assignment or transfer of any interest in any such lease), provided that the terms and conditions of such lease do not constitute a taxable lease as defined herein of the property.
- (11) The conveyance, assignment, transfer or consummated sale of right to use timeshare estate, provided that such estate does not constitute a taxable lease, and further that the conveyance, transfer or sale is or was subject to sales tax and that such sales tax has been paid in accordance with law.
- (12) Any mineral transfer or royalty transfer.
- (13) Transfers to secure a debt or other obligation, or the release of real property which is security for a debt or other obligation.
- (14) a) Any transfer by deed in lieu of foreclosure, on the condition that:
 - i. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee, or beneficiary (as determined at the time of the transfer by deed) of the debt or instrument which is being canceled, in whole or in part, in exchange for the transfer; and
 - ii. Such transfer shall be exempt only to the extent of the current amount of the debt which is being canceled in exchange for the transfer.
- b) Any transfer by sheriff's deed, trustee's deed or other conveyance of real property in connection with an execution sale, foreclosure sale by the public trustee under a power of sale, court decree foreclosing a mortgage, deed of trust

or other security instrument, or court decree of lien foreclosure, on the condition that:

i. Such transfer shall be exempt only if the grantee in such deed is the same person or entity which is the holder, payee, or beneficiary (as determined at the time of the commencement of foreclosure or execution) of the debt or instrument which is the basis of the proceeding, or such person or entity is a junior lienor exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution; and

ii. Such transfer shall be exempt only to the extent of the current amount of the obligation satisfied at the execution or foreclosure sale, plus any obligations to prior lien holders paid from the sale; and

iii. The certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall, if the above described conditions are met, be exempt from the within transfer tax. If the conditions are not so satisfied, there shall be a tax imposed as provided herein, at the time of the issuance of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale, which payment shall be made to the Town in escrow. If no redemption is made by the owner, the tax shall become absolute to the Town upon expiration of owner's redemption periods. If redemption is made by owner, the tax shall be refunded to the person who paid it to the Town. A transfer of the certificate of purchase or other evidence of purchase issued by the person or entity conducting the sale shall be subject to a transfer tax. The deed issued by the person or entity conducting the sale is not a transfer subject to the transfer tax.

(15) Any executory contract for the sale of real property, of less than three (3) years' duration, under which the vendee is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract.

(16) Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the effective date of the ordinance codified herein, provided

(16) Any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the effective date of the ordinance codified herein, provided that an application for exemption is made with the Town prior to the effective date of the ordinance codified herein upon such forms and in such a manner as may be prescribed. Similarly, any transfer that is made pursuant to a valid and legally enforceable contract for sale entered into prior to the increase in tax rate provided for in Section 4-94(b) shall be taxed at the initial rate of one-half percent (.5%), provided that an application for exemption is made with the Town prior to the effective date of the increase upon such forms and in such a manner as may be prescribed.

(17) Any sale or conveyance of real property or improvements for the purpose of constructing or providing low or moderate priced housing units for sale or lease to low, moderate and middle income persons pursuant to a plan authorized and supervised by the Town or the Snowmass Village Housing Department and the initial sale or resale of such units to qualified purchasers pursuant to regulations adopted by said Department.

(18) Any transfer for the purpose of raising investment/equity funds or capital (e.g., sale of partnership interests or stock) to facilitate development or redevelopment of real estate wherein the transferor retains a significant interest in the real estate to be developed or redeveloped or in the entity to which the real estate is so transferred.

(19) Any transfer to a straw man or intermediary for the purpose of obtaining nonrecognition of gain or loss as contemplated by Section 1031 of the Internal Revenue Code of 1986, or otherwise, where vesting of title in the straw man or intermediary is transitory and the straw man or intermediary receives no consideration or only a nominal fee for participation in the transaction. Should the Internal Revenue Service determine that the transaction does not meet the requirements of Section 1031 for purposes of nonrecognition of gain or loss, then this exemption shall be inapplicable.

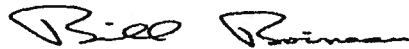
2. **Severability.** If any provision of this Ordinance or application hereof to any person or circumstance is held invalid, the invalidity shall not affect any other provision or application of this Ordinance which can be given effect without the invalid provision or application, and, to this end, the provisions of this Ordinance are severable.

3. **Effective Date.** This Ordinance is hereby adopted as an emergency measure and upon passage shall be effective immediately.

4. **Direction to Town Clerk.** The Town Clerk is directed to publish this Ordinance once within ten (10) days and such publication shall specify that this Ordinance has been adopted as an emergency measure.

READ, APPROVED AND ADOPTED by the Town Council of the Town of Snowmass Village as an emergency ordinance on August, 2010 upon a motion by Council Member Mordkin, the second of Council Member Wilkinson, and upon a vote of 5 in favor and 0 against.

TOWN OF SNOWMASS VILLAGE



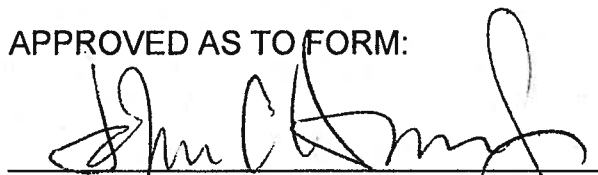
Bill Boineau, Mayor

ATTEST:



Rhonda B. Coxon, Town Clerk

APPROVED AS TO FORM:



John C. Dresser, Jr., Town Attorney