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## Real Estate LAW

# Paying more for the privilege of conveying real property in New York

The New York State Legislature recently ended its legislative session, and changes are on the horizon — including in the area of real estate law.

New York, like many other states, imposes a tax on the privilege of conveying real property. Effective as of July 1, 2019, and as the result of recent changes to the New York Real Estate Transfer Tax Law, this privilege will become more costly for certain conveyances of real property within New York City.

The Transfer Tax Law imposes two separate but related taxes: a “general transfer tax” and a “mansion tax.” Absent the recent changes, the “general transfer tax” imposes a tax of \$2.00 for each \$500 (0.4%) of consideration on every conveyance of New York real property or interest therein. For example, the conveyance of a parcel of real property for \$1,000,000 would result in a transfer tax due of \$4,000.

This “general transfer tax” applies to not only “direct” conveyances of real property, but also certain “indirect” conveyances of real property including the transfer of equity interests in entities owning New York real property and certain leasehold interests with terms exceeding 49 years or containing options to purchase. Additionally, while the 0.4% rate applies in the vast majority of the counties in New York, there are a handful of exceptions, including Erie County, which imposes an additional transfer tax causing the “general transfer tax” in Erie County to be



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0.9%, and New York City, which imposes its own city transfer tax in addition to the State transfer tax.

The recent amendments to the “general transfer tax” impose an additional tax of \$1.25 for each \$500 of consideration for (i) the sale of residential property

where the consideration is \$3,000,000 or above, or (ii) the sale of non-residential property where the consideration is \$2,000,000 or above. This additional tax only applies to transfers in cities with a population of one million or more — making it, at present, only applicable to New York City conveyances. With this change in the law, the sale of residential or commercial property in New York City for \$3,500,000 that would have resulted in a “general transfer tax” of \$14,000 prior to July 1, 2019, will now result in a “general transfer tax” of \$22,750 — a 62.5% increase.

Absent the recent changes, the “mansion tax” imposes a 1% tax (in addition to the “general transfer tax”) on every conveyance of New York residential real property for \$1,000,000 or more. While the number of residential conveyances in Upstate and Western New York for \$1,000,000 or more remain relatively small, such transactions oc-

cur with much greater frequency now than when the current “mansion tax” was adopted in 1989.

It is also worth noting that the mansion tax can create a trap for the unwary buyer or seller since no “mansion tax” is due on a residential conveyance for \$999,999, but a \$10,000 “mansion tax” would be due if the purchase price was increased by one dollar to \$1,000,000. Experienced attorneys and brokers typically seek to negotiate a purchase price below \$1,000,000 if possible to avoid the “mansion tax” or, where that is not possible, seek to include the obligation for payment of the “mansion tax” as one more item open for negotiation between the buyer and seller.

The recent amendments to the “mansion tax” impose an additional tax (on top of the existing “mansion tax”), so essentially the “mansion tax” is increased to: 1.25% for sales between \$2,000,000 and \$2,999,999; 1.5% for sales between \$3,000,000 and \$4,999,999; 2.25% for sales between \$5,000,000 and \$9,999,999; 3.25% for sales between \$10,000,000 and \$14,999,999; 3.50% for sales between \$15,000,000 and \$19,999,999; 3.75% for sales between \$20,000,000 and \$24,999,999; and 3.9% for sales of \$25,000,000 or more. These changes to the “mansion tax” apply only to conveyances of residential real property in cities with a population of one million or more, leaving the prior “mansion tax” rate in effect for all of the state outside of New York City.

Although these recent changes to the Transfer Tax Law apply only to New York City conveyances, the fact remains that the New York State Legislature and the governor were willing to increase the Transfer Tax in order to

close state budget deficits. If New York state's budget challenges continue, it remains to be seen whether the Transfer Tax changes — which for now apply only to New York City conveyances — will be expanded to conveyances else-

where in the state.

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