

BY-LAW #43

DEED TRANSFER TAX BY-LAW

- 1) This By-Law shall be known as and may be cited as the "Deed Transfer Tax By-Law".
- 2) Chapter 10 of the Statutes of Nova Scotia, 1968, as amended by Chapter 52 of the Statutes of Nova Scotia, 1982, the Deed Transfer Tax Act, shall apply to the Municipality of the County of Richmond. The provisions of the Act are set out in Schedule "A" of this By-Law.
- 3) This By-Law shall be in effect from the date of approval of the Minister of Municipal Affairs.

SCHEDULE "A"

Be it enacted by the Governor and Assembly as follows:

1. In this Act:

(a) "Clerk" means the city clerk in the case of a city; the Town Clerk in the case of a town; or the municipal clerk in the case of a municipality;

(b) "deed" means any instrument or writing not testamentary in character, whereby property is conveyed, transferred, assigned or vested in any person, but does not include a mortgage or an agreement of sale or a lease for a term less than twenty-five years or a deed given by a clerk of a municipal unit in pursuance of a sale for rates and taxes;

(c) "Director" means the Director of Assessment for the municipal unit;

(d) "grantee" means the person to whom property is transferred by deed for value or otherwise;

(e) "grantor" means the transferrer or the person who transfers property by deed for value or otherwise;

(f) "Minister" means Minister of Municipal Affairs;

(g) "municipality" means municipality to which the Municipal Act applies;

(h) "municipal unit" means city, town or municipality;

(i) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;

(j) "property" means real property of any kind including any right, easement or power in respect thereof or interest therein;

(k) "registered Canadian charitable organization" means a charitable organization registered under the Income Tax Act (Canada) and the regulations made under that Act;

(l) "Registrar" means the Registrar of Deeds;

(m) "sale price" means the entire consideration for the sale of the property and, without restricting the generality of the foregoing, includes:

(i) money consideration paid together with the par or face value of promissory notes, cheques,

bills of exchange, agreements and securities forming part of the consideration;

(ii) the gross value of real or personal property given in exchange in whole or in part including mortgages made by the grantee in favour of the grantor or his executor, nominee, assignee, trustee or anyone on his behalf;

(iii) outstanding obligations or accounts cancelled, assumed or satisfied;

(iv) the amount of rates, taxes, liens, mortgages and encumbrances, including interest and expenses thereon assumed by the grantee at the date of transfer;

(n) "tax" means the tax levied, assessed or imposed by this Act;

(o) "town" means town to which the Towns Act applies;

(p) "transfer" means a transaction whereby property is transferred or conveyed by deed;

(q) "treasurer" means the treasurer of the municipal unit;

(r) "unit" means municipal unit;

(s) "value" means the sale price;

2. (1) Excepting for this Section, this Act does not apply to and is not in effect in any unit unless a by-law under this Section has been passed by the Council thereof and is in force.

(2) Subject to the approval of the Minister, the Council of a unit may pass a by-law providing that this Act applies to the unit and this Act shall apply to the unit on and after the date named in the by-law or the date of approval by the Minister, whichever is later.

(3) This Act does not apply to any municipal unit that, under the authority of any other Act, levies a tax of a kind permitted by this Act.

2(A) (1) Notwithstanding Section 2 or any enactment, this Section applies to every municipal unit that under the authority of this Act or any other Act levies a tax of the kind permitted by this Act.

(2) Where a deed transfer property

(a) between persons named to one another;

(b) by way of gift, notwithstanding that

(i) the deed transfers property subject to an encumbrance including a mortgage or lien for rates and taxes and the grantee assumes the amount of the encumbrance, including interest and expenses thereon, or

(ii) there is a nominal consideration therefore,

it is exempt from deed transfer tax.

3. (1) On every deed a tax of one-half of one percent of the value of the property thereby conveyed is imposed and levied and payable to the municipal unit within which the property lies.

(2) Where the property is situated in more than one unit, the value shall be apportioned between or among the units whether or not this Act is in effect in all of them and the tax for each unit shall be computed on that part of the value that has been apportioned to that unit.

(3) Where the property is situated in more than one unit, the apportionment shall be made by the Directors of Assessment for the units involved. If the Directors are unable to agree, then the value shall be determined summarily by any regional Assessment Appeal Court on whom the Directors agree, or, in the absence of agreement, by one appointed by the Minister, and the fees and expenses of the Regional Assessment Appeal Court on this determination shall be paid by the units involved in the proportions determined by that Court.

(4) Where the units involved have the same Director, then he shall apportion the value between or among them and his decision shall be final.

4. When the grantee is a registered Canadian charitable organization a deed is exempt from the tax if the property is not to be used for any commercial, industrial, rental or other business purpose and if an officer of the grantee makes and files with the clerk an affidavit to this effect; but if within three years

after the filing of the affidavit the property is used by the Grantee for a commercial, industrial, rental or other business purpose or is sold or conveyed by the grantee, the clerk of the unit shall compute the tax for which the grantee would have been liable if it had not been a registered Canadian charitable organization and the grantee is liable to pay the amount thereof and interest thereon at the rate of six percent per annum computed from the date of the deed first referred to in this Section.

5. (1) When a deed merely confirms, corrects, modifies or supplements a deed previously given and there is no consideration therefore beyond one dollar and it does not include more property than the deed previously given, then it is exempt from the tax.

(2) When a deed transfers property between a wholly owned subsidiary company and its parent company or between companies that are wholly owned by another company or person, then it is exempt from the tax.

6. A deed in which the certificates of execution show on their face that they were signed by the official prior to the date on which this Act becomes effective in the unit in which the property is situated is not subject to the tax.

7. (1) Not later than seventy-two hours after a transfer, and whether or not a tax is payable thereon, the grantee shall file with the clerk an affidavit made by himself or by someone having a full knowledge of the facts, setting out the names of the parties, the location of the property, the sale price of the property, with full details of the consideration, including the amount of any lien or encumbrance subject to which the transfer was made; and if the affidavit is not made by the grantee it shall state that the person making it has personal knowledge of the facts stated in it. The affidavit may be in the form in Schedule "A" or to the like effect.

(2) Where the affidavit is made by a person other than the grantee he is personally liable jointly and severally with the grantee for payment of the amount of the tax.

(3) If the grantee claims exemption from the tax, the affidavit shall be filed but shall set out the facts on which the grantee claims to be exempt, and in the case of a registered Canadian charitable organization shall give the number of its registration under the Income Tax Act (Canada).

8. (1) On receipt of the affidavit the Clerk shall compute the amount of the tax.

(2) The tax shall be paid by the grantee named in the deed and shall be due and payable by him at the time of making transfer.

9. (1) If the clerk is not satisfied that the affidavit sets out the true and complete sale price or if for any reason he is not able from the affidavit to determine the sale price, he may refuse to accept the affidavit and to endorse the deed, and shall so advise the person who tenders the affidavit.

(2) The grantee shall thereupon tender the affidavit to a regional assessment appeal court named by the clerk or by the Minister if the clerk does not name one within six hours after he has declined to accept the affidavit.

(3) This Court shall proceed to determine the sale price and for that purpose may examine persons on oath. This court shall also determine who is to pay its fees and expenses, and if any of these are to be paid by the grantee, then the municipal unit may pay the entire fees and expenses of the Court and add to the tax the amount or part thereof that is to be paid by the grantee.

(4) The determination of an assessment appeal court shall be final.

10. (1) Upon payment of the tax, the clerk shall endorse the deed with a certificate in the form in Schedule "B" or to the like effect.

(2) If the clerk finds that the deed is exempt from tax, he shall endorse the deed with a certificate in the form in Schedule "C" or to the like effect.

10. (A) (1) With the consent of the Attorney General, the council of a unit may, by resolution, appoint the Registrar of Deeds for the registration district in which the unit is located, to exercise and perform the powers, duties and responsibilities of the clerk under Sections 7, 8, 9 and 10; and may enter into an agreement determining the compensation to be paid to the Registrar of Deeds;

(1A) Notwithstanding subsection (1) or any enactment, the council of a unit may appoint a person to exercise and perform the powers, duties and responsibilities of the clerk under Sections 7, 8, 9 and 10 or under any enactment that levies a tax of a kind permitted by this Act and may enter into an agreement determining the compensation to be paid to such person.

(2) After such resolution has been passed and until it has been revoked, affidavits and other documents that may be filed with the clerk shall be filed instead with the Registrar of Deeds, and the Registrar shall compute the amount of the tax and take all the proceedings that the clerk may or is required to take under this Act, and upon payment of the tax or upon the Registrar finding that the deed is exempt from tax, he shall endorse the deed with one of the certificates referred to in Section 10.

(3) On the first day of each month the Registrar shall transmit to the Clerk the documents previously filed with him under this Act with a report of his proceedings thereunder, excepting the documents relating to cases where the Registrar has not signed one of the certificates referred to in Section 10, and at the same time shall transmit to the clerk the amount of the tax collected by him after first deducting any remuneration that may be due to him.

11. If the grantee does not pay the tax when due he shall pay interest thereupon at the rate of one half of one percent per month until paid, beginning ten days after the transfer, and a penalty of ten percent on any tax or portion thereof which remains unpaid after thirty days from the date of the transfer.

12. The tax with interest and penalty constitutes a lien upon the property, situate wholly or in part within the municipality, which is conveyed by the deed. The lien attaches on the date when the tax is due and continues until discharged by payment, or in accordance with law, and may be collected in the same manner as annual rates and taxes of the unit are collected.

13. If the clerk of any municipal unit has advised the Registrar of Deeds that the unit has passed and the Minister has approved a by-law under Section 2 and that this Act is in force in that unit, then notwithstanding the Registry Act, the Registrar shall not thereafter receive for registration any deed of property wholly or partly within the unit unless it bears a certificate signed by the clerk stating that the tax has been paid in full or stating that no tax is payable.

14. Any person who makes any false statement in an affidavit under Section 7 or any person who violates any provision of this Act shall be liable on summary conviction to a penalty not exceeding five hundred dollars and in default of payment, to imprisonment for a term not exceeding three months, and, further shall be liable to pay the amount of the tax, together with interest and penalty that should have been paid upon such deed.

15. This Act may be cited as the Deed Transfer Tax Act.







THIS IS TO CERTIFY that the by-law of which the foregoing is a true copy, was truly passed at a duly called meeting of the Municipal Council of the Municipality of the County of Richmond, duly held on the day of \_\_\_\_\_, A.D., 1985.

GIVEN under the hand of the Municipal Clerk, Treasurer and under the Corporate Seal of the said Municipality on this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 1985.

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MUNICIPAL CLERK

