

## **REALTY TRANSFER TAX**

### **STATUTORY PROVISION**

Title 30, Delaware Code, Chapter 54.

### **COLLECTION/ADMINISTRATIVE AGENCY**

The Department of Finance, Division of Revenue appoints designated affixing agents for the sale of realty transfer tax stamps. The Recorders of Deeds in New Castle, Kent, and Sussex Counties are generally designated as affixing agents. These agents are responsible for the collection of the tax upon the recording of a deed. In addition, the Division of Revenue collects a tax on the value of improvements exceeding \$10,000 when the underlying property has been held by the same owner for less than one year.

### **GENERAL LIABILITY**

A tax is imposed on real estate transactions at the time of the execution, delivery, or presentation for recording any documents transferring the property. In general, the following are excluded from the tax: leasehold interests; mortgage foreclosure sales; conveyances between husband and wife; conveyances between parent and child; conveyances to a religious organization; conveyances without consideration; conveyances between a parent corporation and a wholly owned subsidiary; conveyances to or from a corporation or partnership from the owner thereof if the ownership in the business is identical to the proportion of ownership in the real property; and conveyances to or from the United States, this state, or to or from their instrumentalities, agencies, or political subdivisions and the University of Delaware.

### **TAX RATE**

The state imposes a tax at the rate of 2.0% of the fair market value of the property divided equally between the grantor and grantee. Local governments are permitted to levy a 1.5% tax. In cases in which the local levy exceeds 1.0%, the state rate decreases to 1.5%. With few exceptions, in practice, the state and local taxes are both levied at a rate of 1.5% (a combined rate of 3.0%).

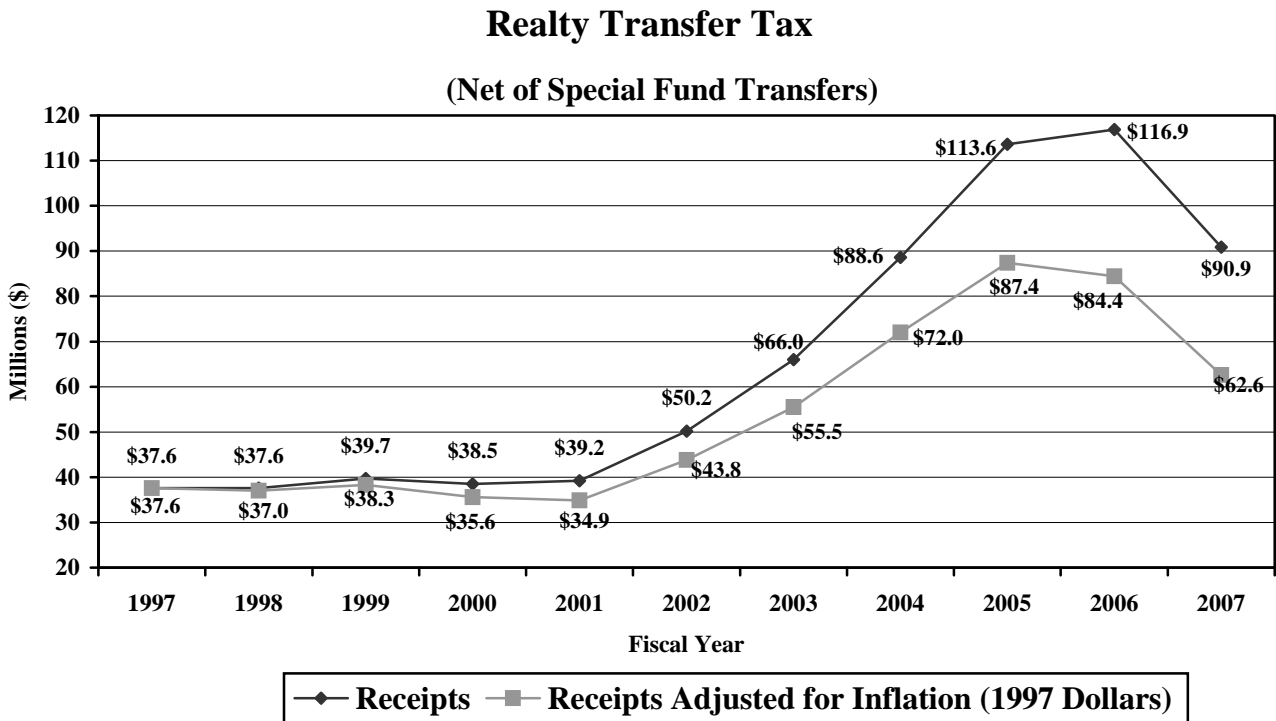
Where the value of property transferred is less than \$100, no tax is imposed. A 1% tax is levied on the value of improvements exceeding \$10,000 when the underlying property has been held by the same owner for less than one year.

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### Exemptions:

There are 22 exemptions. Below is a partial list. The remainder can be found in Title 30, Del. Code §5401.

- 1) Wills, mortgages, foreclosures, and leases of commercial property.
- 2) Property with value less than \$100.
- 3) Transfers without consideration and conveyances between parent corporations and subsidiaries.
- 4) Transfers involving nonprofit industrial development agencies.



### TAX RECEIPTS

### LEGISLATIVE HISTORY

<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
7/31/71	8/1/71	Rate changed to 2% to be apportioned equally between the grantor and grantee

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<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
		(58 Del. Laws c 297).
7/6/73	7/6/73	Applied the tax to condominiums and long-term leases (59 Del. Laws c 15).
7/1/83	7/1/73	Added that sales or assignments of long term leases of residential real estate are subject to tax. Extended to partnerships and partial corporate liquidations the three (3) year holding period required of corporations (64 Del. Laws c 182).
7/3/86	1/1/87	Added that the sale of intangible interest in partnerships, trusts and corporations, where the beneficial ownership has changed by more than 20%, is taxable as a conveyance (65 Del. Laws c 426; HB 462).
7/10/87	7/10/87	Negligence penalties enacted (66 Del. Laws c 130; HB 266).
7/2/87	7/1/87	Enacted revenue sharing in which 25% of realty transfer tax to be remitted by agent (i.e., county recorders) is earmarked for distribution to local governments. Expired 6/30/88 (66 Del. Laws c 94; SB 298).
6/27/89	6/27/89	Added exemptions for: (1) mobile homes provided document fee is paid; and (2) conveyance without consideration to §501(c)(3) organizations (67 Del. Laws c 40; SB 55).
7/2/90	9/1/90	Provided a 1% tax on amounts of construction exceeding \$10,000 when the underlying property has been held by the same owner for less than one year (67 Del. Laws c 262; HB 729).
7/20/90	7/20/90	Empowered county governments to impose and collect a realty transfer tax not to exceed 1% of the value of the real property (67 Del. Laws c 415; HB 727).
7/13/90	7/13/90	Created Conservation Trust Fund to which a portion of realty transfer tax revenues are earmarked (67 Del. Laws c 336; HB 110).
7/15/91	7/15/91	Established exclusion from tax for conveyances to non-profit organizations when the property is purchased for open space preservation purposes (68 Del. Laws c 165; SB 159).
7/8/91	7/8/91	Exempted from tax qualified conveyances under the Delaware Agricultural Lands Preservation Act (68 Del. Laws c 118; HB 200).
8/1/91	1/1/92	Repealed various procedural provisions in light of enactment of Chapter 5 of

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		Title 30 (68 Del. Laws c 187; HB 281).
2/4/94	2/4/94	Clarified the term "value" with respect to realty transfers (69 Del. Laws c 188; HB 244).
7/1/98	7/1/98	Decreased the rate from 2% to 1.5% when and where county and municipal governments raise their maximum tax rate from 1.0% to 1.5%. Appropriated funds for the legal defeasance of the Delaware Land and Water Conservation Revenue Bonds (71 Del. Laws c 347; HB 757).
7/23/99	7/23/99	Exempted transfers of real estate acquired by a nonprofit corporation for the purpose of rehabilitation and resale without profit. (72 Del. Laws c 217; HB 175 w/ HA 1).
6/30/00	6/30/00	Exempted half-siblings and step-siblings from the real estate transfer tax ( 72 Del. Laws c 372; HB 551).
6/30/01	6/30/01	Restructured the allocation of Realty Transfer Tax revenues to the Land and Water Conservation Trust Fund accounts. At the end of each fiscal year, \$1 million will be deposited into the Endowment Account and \$9 million into the Project Account. Previously, deposits to each account were made in the amounts of \$7 million and \$3 million respectively. Additionally, the 2005 end date for Endowment Account growth was removed (73 Del. Laws c 88; HB 192).
7/20/05	7/1/05	Earmarked \$10 million annually in Realty Transfer Tax revenue for the Farmland Preservation Fund (75 Del. Laws c 203; SB 229).
1/26/06	1/26/06	Ensured that merger transactions and all kinds of indirect dealings in intangible property, that are properly characterized as a sale of real property under § 5401(7), are taxable under the Realty Transfer Tax (75 Del. Laws c 225; HB 330).