

AN ORDINANCE IMPOSING A TAX UPON THE TRANSFER OF INTERESTS IN REAL PROPERTY; ALLOCATING THE PROCEEDS THEREFROM FOR THE GENERAL FUND; REQUIRING THE COLLECTION OF SUCH A TAX BY THE COUNTY CLERK; EXEMPTING CERTAIN TRANSACTIONS FROM THE TAX IMPOSED; ESTABLISHING PROCEDURES FOR ACQUIRING A CERTIFICATE OF EXEMPTION; ESTABLISHING PENALTIES FOR VIOLATION OF THIS ORDINANCE; CREATION OF A LIEN ON THE PROPERTY TRANSFERS FOR THE AMOUNT OF THE UNPAID TAX; AND SETTING FORTH DETAILS IN RELATION TO THE FOREGOING.

WHEREAS, the General Assembly of the Town of Ophir has determined that the Town is in need of revenue to meet its basic operating costs; and WHEREAS, the General Assembly has determined that a tax on the transfer of real property within the Town is an equitable and appropriate source of revenue;

NOW THEREFORE BE IT ORDAINED by the General Assembly of the Town of Ophir, Colorado, that:

Section 1. Imposition of Tax. There is hereby imposed a tax on all transfers by deeds, instruments, writings, ground leases, or any other document by which any lands, tenements, or other interests in real property located in the Town of Ophir are sold, granted, assigned, transferred or otherwise conveyed to or vested in a purchaser, or purchaser thereof, or any other person or persons, except as may be specifically exempted by Section 5 of this Ordinance. Said tax shall be due and payable at the time of transfer, and no document shall be recorded whereby or wherein title to real property situated in the Town of Ophir is transferred until the real estate transfer tax has been paid.

Section 2. Definitions.

a. Consideration. "Consideration" means and includes the actual cash paid and/or value of the property delivered, or contracted to be paid or delivered, in return for the transfer of ownership or title to real property, and shall include the amount of any lien, mortgage, contract indebtedness, or any other incumbrance, either given to secure the purchase price, or a part thereof, or remaining unpaid on the property at the time of sale. The term does not include the amount of any outstanding lien or encumbrance in favor of the United States, the State of Colorado, or of a municipal or quasi-governmental corporation or district for taxes, special benefits or improvements. In the event the transaction or transfer is by ground lease agreement not specifically exempted in Section 5, the consideration shall be based upon the capitalization at 10% of the average annual rental over a ten year period or if the term shall be less than ten years, then for the entire term of the lease, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, or at the election of the Town Clerk, the tax shall be based upon the assessed value of the property covered by the lease.

b. Person. "Person" means any individual, corporation, business trust, estate, trust, partnership, association or any other legal entity.

c. Transfer. "Transfer" means and includes any grant or conveyance of the ownership of a title or real property that is evidenced by any deed, conveyance, or exchange instrument or writing wherein or whereby title to real property situated in the Town of Ophir is granted or conveyed, or the conveyance of a possessory interest and all other indicia of ownership without the passing of legal title, subject to the exclusions in this Ordinance.

d. Real Property. "Real Property" shall be deemed to mean real property as defined by and under the laws of the State of Colorado.

Section 3. Persons liable for Tax. Any seller, or sellers, or person or persons who make a transfer which is subject to the tax imposed by Section 1, above, and any purchaser or purchasers thereof, or any other person or persons to whom such a transfer is made shall be jointly and severally liable for the Tax.

Section 4. Amount of Tax. The amount of tax payable in each case shall be as follows:

a. Where there is no consideration, or when the consideration is Five Hundred Dollars or less, no Land Transfer Tax shall be payable.

b. Where the consideration shall exceed five Hundred Dollars (\$500), the Land Transfer Tax payable shall be computed at the rate of Four Percent (4%) unless a lesser rate is set by Ordinance of the General Assembly.

Section 5. Exemptions. The Land Transfer Tax imposed by this Ordinance shall not apply to:

a. Any document wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the State of Colorado, either by grantor or grantee.

b. Any document granting or conveying title to real property in consequence of gift of such property, where no consideration other than love and affection, charitable donation or nominal compensation is evidenced by the terms of the instrument of transfer.

c. Any document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy in real property except where additional consideration of value is paid in connection with such partition or termination.

d. The transfer of title or change of interest in real property by reason of death, will or decree of distribution.

e. Transfers to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Act or in an equity receivership proceeding.

f. Transfers made pursuant to business organization, reorganization, or restructuring including, but not limited to mergers or consolidation of corporations, or by a subsidy to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock.

g. Any deed or conveyance made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of title; or granting easement, rights of way or licenses.

h. Any order or decree of court quieting or resting title, including a final order awarding title pursuant to a condemnation proceeding.

i. Any deed granting or conveying title to cemetery lots.

j. Any transfer to secure debt or obligation, or transfers of releases of property which is security for a debt or other obligation.

k. Any deed or conveyance under execution sale, or foreclosure sale or court decree of lien foreclosure, sheriff's deed, public trustee deed or treasurer's deed.

Section 6. Application for Exemption

a. In the event any document which is exempt from the Land Transfer Tax herein imposed does not contain language clearly showing its exempt character, the grantor or grantee may apply for and obtain from the Town of Ophir a Certificate of Exemption, which may be affixed to the deed or instrument of transfer. The Certificate of Exemption shall be in substantially the following form:

EXEMPTION FROM LAND TRANSFER TAX

The undersigned, as grantor (grantee) of a deed or instrument of conveyance from _____ to _____, (name of grantor and grantee), dated _____, 19____, hereby apply for exemption from payment of the Land Transfer Tax, imposed by Ordinance N. 79-____, of the Town of Ophir. The basis for such exemption is as follows:

(State briefly the grounds for exemption, including applicable sections of Ordinance No. 79-__3__)

I hereby certify under penalty of perjury that the foregoing statements are true and correct.

Grantor or Grantee

Certificate of Exemption

I hereby certify that the above described land transfer is exempt from the payment of the Land Transfer Tax under Ordinance No. 79-____, Section ____.

Town Clerk

b. Any person whose claim of exemption duly applied for under the provisions of this section is denied by the Town Clerk may immediately appeal to the General Assembly for a determination of such exemption and such appeal shall be considered by the General Assembly at its next regular meeting. In the event of a determination by the General Assembly favorable to the appellant, any amount previously deposited, or so much as may be determined by the General Assembly, shall be promptly refunded to the person paying or depositing the same. If a decision is not made by the General Assembly at its next regular meeting, a decision will be deemed favorable to the appellant.

Section 7. Lands affected. When a document subject to the Ordinance includes property located within the Town of Ophir and property located within another city or in San Miguel or other counties, the tax imposed under the authority of this Ordinance shall be computed only with respect to property located within the Town of Ophir and the tax shall be assessed on that part of the consideration fairly attributable to the part of such property located within the Town of Ophir.

Section 8. County Clerk to enforce.

a. The County Clerk _____ is charged with the enforcement of the provisions of this Ordinance and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations pertaining thereto.

b. At the time of any transfer upon which a tax is imposed by this Ordinance there shall be made a report to the County Clerk on forms supplied by the Town of Ophir setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the location of the real estate transferred, and such other information as may be required.

c. For the purpose of collection of the taxes imposed by this Ordinance, all banks, title companies, escrow companies, building and loan institutions, attorneys, real estate companies, or other closing agents or agencies, permitted as such to do business under the laws of the State of Colorado may collect the Land Transfer Tax and remit the same to the County Clerk for and on behalf of the seller and buyer.

Section 9. Delinquencies, Penalties and Interest.

The tax imposed under this Ordinance is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if not paid then. In the event the tax is not paid prior to becoming delinquent, interest shall accrue on the amount of the unpaid tax at the rate of eighteen percent per annum (18%) until so paid.

Section 10. Lien.

a. The amount of the Land Transfer Tax imposed by this Ordinance, and the penalty and interest due thereon, is hereby assessed against the property transferred, and if not paid when due, such tax, penalty and interest, if any, shall constitute a lien on the property for the amount thereof, which lien shall continue until its discharge of record by foreclosure or otherwise.

b. If the tax is unpaid and delinquent, the County Clerk shall give written notification to the buyer at the address shown on the deed or instrument, or his last known address, of said delinquency. Said notification shall be mailed certified or registered mail, postage prepaid, return receipt requested, and shall be effective on the date of mailing. If the tax, penalty and interest are not paid within 30 days of notification, the County Clerk shall mark the same as delinquent and shall, by October 10 of each year, certify such delinquencies, along with interest and penalties, to the Treasurer of San Miguel County, who shall collect the same in the same manner as any delinquent general taxes levied upon such property.

c. The amount of the tax, penalty and interest imposed under the provisions of this Ordinance shall be deemed a debt to the Town of Ophir. Any person owing money to the Town under provisions of this Ordinance shall be liable to an action brought in the name of the Town for recovery of said amount.

d. Any person who shall fail or refuse to pay any tax due hereunder may be punished by a fine not exceeding Three Hundred Dollars (\$300) or imprisonment for a period of not more than ninety days, or both such fine and imprisonment.

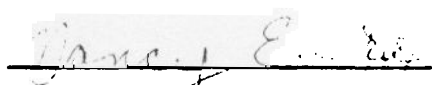
Section 11. Severability. If any provision, clause, phrase or section of this Ordinance, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions, clauses, phrases or sections or applications of the Ordinance which can be given effect without the invalid provisions or applications and to this end, the provisions or applications of this Ordinance are declared to be severable.

Section 12. Allocation of revenue. Commencing January 1, 1980, all funds received by the Town pursuant to this Ordinance from the tax imposed hereby shall be deposited in the General Fund for operation costs.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED THIS 4TH DAY OF NOVEMBER, 1979 BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, STATE OF COLORADO.

ATTEST: I CERTIFY that the above Ordinance No. 79-3 was introduced to the General Assembly of the Town of Ophir at its regular meeting on the 4th day of November, 1979.

I further certify that the above Ordinance No. 79-3 was published in the Telluride Times on the 15th day of November, 1979, at least 10 days prior to a second reading, scheduled for the 25th day of November, 1979.


Town Clerk

INTRODUCED, READ, FINALLY PASSED AND ORDERED PUBLISHED THIS 25th DAY OF NOVEMBER, 1979 BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR, STATE OF COLORADO..


MAYOR OF OPHIR




TOWN CLERK