



Los Angeles Office of Finance Clarifies Exemptions from “Mansion Tax”

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The Los Angeles Office of Finance (Office of Finance) has released a new FAQ confirming that real property transfers that are exempt from the current City documentary transfer tax (to which the FAQ refers as the “Base Tax”) also are exempt from the special tax under Measure ULA, commonly referred to as the “mansion tax” (ULA Tax). While new Sections 21.9.14 and 21.9.15 of the Los Angeles Municipal Code provide exemptions from the ULA Tax for certain non-profits, Community Land Trusts, Limited-Equity Housing Cooperatives, government entities and other entities with experience in affordable housing, the FAQ reflects that other more typical Base Tax exceptions will apply as well.

Effective April 1, 2023, the ULA Tax imposes a 4% levy on all residential and commercial properties sold for more than \$5 million and less than \$10 million and a 5.5% levy for those sold for \$10 million or more. The ULA Tax is in addition to the current Base Tax imposed by the City and the typical documentary transfer tax imposed by the County of Los Angeles (such Base Tax and documentary transfer tax, the DTT). As a practical matter, a person trying to record a deed in Los Angeles County must now account for, calculate and report three layers of tax:

1. The typical documentary transfer tax imposed by the County of Los Angeles
2. The Base Tax imposed by the City of Los Angeles
3. The ULA Tax

The Los Angeles County Recorder’s web site provides a guide for calculating the Los Angeles County and City DTTs, and the FAQ does the same for the Base Tax and the ULA Tax. The person trying to record the deed also is responsible for reviewing what exemptions from DTT may apply and writing down the correct exemption language on the deed. In this regard Los Angeles County provides a 2-page sheet listing the exemptions it will accept and the exact language to be placed on the deed (the Exemption List). We should note that one significant difference between DTT and the ULA Tax is that DTT may be calculated on the

consideration less liens and encumbrances remaining in place, while the ULA Tax expressly states the consideration is to “include[e] the value of any lien or encumbrance remaining thereon at the time of sale.”

Pending any new regulations or formal guidance from the Office of Finance, less formal interpretations like the FAQs are valuable indicators of how the Office of Finance will interpret and apply the ULA Tax. According to the updated FAQ, “all other transactions which are exempt from the base Real Property Transfer Tax per local, state or federal laws and regulations” also are exempt from the ULA Tax. Such language could refer to the Base Tax or the DTT, or both. In this regard, there are three layers of authority as to what is exempt from DTT: California Revenue and Taxation Code (“R&TC”) sections 11921 through 11930; and the Los Angeles County and Los Angeles City ordinances (which reflect some but not all of the state exemptions). As a practical matter, Los Angeles County’s Exemption List is the final say as to what exemptions apply because that is the list on which an officer at the County Recorder will rely in accepting or rejecting a deed. Exemptions here include, for example:

- a conveyance to secure a debt or reconveyance to satisfy a debt;
- a gift or bequest;
- a conveyance where the liens and encumbrances exceed the value of the property; and
- a change in the manner of holding title where the proportional direct and indirect ownership interests remain exactly same (known colloquially as a “same proportionate interests transfer – for example, one LLC transfers property to a wholly-owned LLC subsidiary).

Under the FAQ, such transfers should also be exempt from the ULA Tax, and the Office of Finance may offer further guidance here (as seemed to be contemplated by the ULA Tax Ordinance itself authorizing the Director of Finance to adopt regulations to define “realty sold” as used in the Ordinance and clarify procedures for exemptions).

However, the opposite is true as well: Transfers not exempt from the DTT probably will not be exempt from the ULA Tax. Practitioners and taxpayers should be aware that the County of Los Angeles per the Los Angeles Registrar/Recorder web site takes the position that DTT applies to certain transfers of interests in entities owning real estate (as well as transfers of direct interests in real estate) that result in a greater-than-50% interest in control of the legal entity being transferred. In this regard the County follows the California Supreme Court’s 2017 decision in *926 North Ardmere Avenue, LLC v. County of Los Angeles* which held that California localities may impose DTT with respect to entity transfers and that principles similar to those under the property tax laws for determining a change in ownership also would apply to the documentary transfer tax. (See our prior eAlert on this decision.) The facts of *926 North Ardmere*, and the wording of the County’s web site, indicates that DTT might apply not only in the “easy” case where there is an outright transfer of 100% of the interests in an LLC or other entity owning real estate, but also in the situation where a person through a series of incremental transfers acquires more than 50% ownership of an entity owning real estate. If DTT applies to such transactions, then it is possible (and indeed seems likely) that the ULA Tax applies as well.

In the current economic environment for office properties in Los Angeles (as well as other areas throughout the country), we should note that although R&TC section 11926 exempts transfers to a beneficiary or mortgagee by foreclosure or by deed-in-lieu of foreclosure from the documentary transfer tax, neither the County nor City of Los Angeles has expressly incorporated that exemption in its respective ordinances. Such code provision also does not cover a trustee’s deed to a third-party successful bidder at foreclosure sale. While a taxpayer or practitioner might rely as to DTT on the exception listed in the Exemption List that,

"The value of the property in this conveyance, exclusive of liens and encumbrances is \$100.00 or less, and there is no additional consideration received by the grantor, R & T 11911", the provisions of the ULA Tax that the value of liens and encumbrances is not a reduction to the consideration for purposes of calculating ULA Tax, likely make such provision of R&TC section 11911 inapplicable to the ULA Tax."

As always, property owners and practitioners should be alert to guidance from the Office of Finance of these and similar issues and, in the meantime, peruse the FAQ for further updates.