

**JOE PAUL GONZALEZ  
CLERK, AUDITOR & RECORDER  
REGISTRAR OF VOTERS**

**Telephone:**

Co. Clerk: (831) 636-4029  
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**OFFICE OF THE COUNTY CLERK, RECORDER &  
REGISTRAR OF VOTERS**  
440 Fifth Street, Room 206  
Hollister, California 95023  
[www.sbcvote.us](http://www.sbcvote.us)

March 11, 2019

The San Benito County Clerk Recorder will be launching a new clerk recorder software program on April 1, 2019. We have been working tirelessly to insure that the "go live" date runs as smoothly as possible. But we ask that everyone be patient and work with us in the case of any unforeseen issues. For the title companies reports that are normally printed they will now be emailed daily, as like many companies we are attempting to be less paper, we request that you send at least two emails for persons that will receive the daily reports. We look forward to this new system and all the exciting new strategies it will provide to enhance the clerk recorder's abilities to serve the public.

Additionally some of our new recording requirements are launching that same day; please see the attached information in regards to the New Document Transfer Tax Ordinance, Transfer Tax Affidavit, Revenue & Taxation Code Citations and SB2 Fees requirements.

We would like to schedule a Q & A for any title company, law office, title service provider or other interested parties.

If you are interested in a Q & A please email me at [jeschultz@cosb.us](mailto:jeschultz@cosb.us).

Thank You

Jennifer Schultz  
Senior Deputy Clerk-Recorder-Elections

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**From:** Joe Paul Gonzalez, San Benito County Recorder

**To:** Title and Escrow Companies and Other Interested Parties

**Re:** Documentary Transfer Tax Affidavit and New Document Recording Requirements

Effective April 1, 2019, a new Transfer Tax Affidavit form must accompany any documents presented for recordation to the County Recorder's Office. The Transfer Tax Affidavit is required to be completed and submitted regardless of whether the documents presented for recordation are submitted as exempt or subject to transfer taxes. Please note: government agencies that are a party to the recording document transaction will not be required to submit a Transfer Tax Affidavit form.

For transfers between publicly or privately held corporations and other public entities, we request that you submit the Affidavit and supporting documentation at least one (1) week in advance of the date you wish to record in order to provide sufficient time to review and avoid delay in recordation.

In addition to existing recording requirements, the information below is now required to record:

- all documents related to property must have the Assessor's Parcel Number (APN) clearly placed on the first page of the recording;
- any document utilizing an exemption (Revenue & Taxation, SB2, Govt. Code, Probate, etc.) must be clearly stated on the first page of all documents, we request that cover sheets only be utilized when an exemption claim will not fit on the first page of the document.

We are attaching a copy of the County's newly adopted "Real Property Transfer Tax" Ordinance and the Transfer Tax affidavit form for your convenience.

Please feel free to contact Angela Curro or Jennifer Schultz at the County Recorder's Office (831-636-4029) with any questions that you may have concerning this notice.

## ARTICLE I. REAL PROPERTY TRANSFER TAX

### § 5.03.001 SHORT TITLE; STATUTORY AUTHORITY.

This article shall be known as the "Documentary Transfer Tax Ordinance of the County of San Benito." It is adopted pursuant to Part 6.7 (commencing with § 11901) of Division 2 of the Revenue and Taxation Code and Part 0.5 (commencing with § 60) of Division 1 of the Revenue and Taxation Code with special reference to §§ 64(c) and (d).

(Ord. 969, § 3, 2018)

### § 5.03.002 IMPOSITION OF TAX; AMOUNT.

(A) There is hereby imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the County of San Benito shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser(s) or any other person(s) by their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds \$100, a tax at the rate of \$0.55 for each \$500 or fractional part thereof.

(B) For purposes of this article, "realty sold" includes a change of ownership as set forth in Part 0.5 (commencing with § 60) of Division 1 of the Revenue and Taxation Code with special reference to §§ 64, (c) and (d).

(C) The transfer of any mobile home installed on a foundation system, pursuant to § 18551 of the Health and Safety Code, and subject to property taxation shall be subject to this article.

(Ord. 969, § 5, 2018)

### § 5.03.003 PERSONS LIABLE FOR PAYMENT OF TAX.

The tax imposed by § 5.03.002 shall be paid by any person who makes, signs, or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued.

(Ord. 969, § 7, 2018)

### § 5.03.004 EXEMPTIONS.

(A) *Security instruments.* The tax imposed pursuant to this article shall not apply to any instrument in writing given to secure a debt.

(B) *Governmental entities.* Any deed, instrument or writing to which the United States or any agency or instrumentality thereof, any state or territory, or political subdivision thereof, or the District of Columbia is a party acquiring titles shall be exempt from any tax imposed pursuant to this article, however the tax may be collected from any other party liable therefor.

(C) *Plans of reorganization and adjustment.*

(1) The tax imposed pursuant to this article shall not apply to the making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment that is any of the following:

(a) Confirmed under the Federal Bankruptcy Act, as amended;

(b) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended;

(c) Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended; or

(d) Whereby a mere change in identity, form or place of organization is effected.

(2) Subdivision (A) of this section shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within five years from the date of such confirmation, approval, or change.

(D) *Orders of securities and exchange commission.* The tax imposed pursuant to this article shall not apply to the making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of § 1083 of the Internal Revenue Code of 1954, but only if:

(1) The order of the Securities and Exchange Commission in obedience to which such conveyance is made recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79K of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935;

(2) Such order specifies the property which is ordered to be conveyed; and

(3) Such conveyance is made in obedience to such order.

(E) *Transfer of interest in partnership.*

(1) In the case of any realty held by a partnership (or other entity treated as a partnership for federal income tax purposes), no tax shall be imposed pursuant to this article by reason of any transfer of an interest in the partnership or other entity or otherwise, but only if:

(a) Such partnership (or other entity treated as a partnership for federal income tax purposes) is considered a continuing partnership within the meaning of § 708 of the Internal Revenue Code of 1986; and

(b) Such continuing partnership (or other entity treated as a partnership for federal income tax purposes) continues to hold the realty concerned.

(2) If there is a termination of any partnership (or other entity treated as a partnership for federal income tax purposes) within the meaning of § 708 of the Internal Revenue Code of 1986, for purposes of this article, such partnership (or other entity treated as a partnership for federal income tax purposes) shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership (or other entity treated as a partnership for federal income tax purposes) at the time of such termination.

(3) Not more than one tax shall be imposed pursuant to this article by reason of a termination described in subdivision (E)(2) of this section, and any transfer pursuant thereto, with respect to the realty held by such partnership (or other entity treated as a partnership for federal income tax purposes) at the time of such termination.

(4) No tax shall be imposed pursuant to this article by reason of any transfer between an individual or individuals and a legal entity or between legal entities that results solely in a change in the method of holding title to the realty and in which proportional ownership interests in the realty, whether represented by stock, membership interest, partnership interest, co-tenancy interest, or otherwise, directly or indirectly, remain the same immediately after the transfer.

(F) *Instruments in lieu of foreclosure.*

(1) The tax imposed pursuant to this article shall not apply to any deed, instrument or writing to a beneficiary or mortgagee, which is taken from the mortgagor or trustee as a result of, or in lieu of, foreclosure; provided, that such tax shall apply to the extent that the consideration exceeds the unpaid debt, including the accrued interest and cost of foreclosure.

(2) Consideration, unpaid debt amount, and identification of grantee as beneficiary or mortgagee shall be noted on the deed, instrument or writing, or stated in an affidavit or declaration under penalty of perjury for tax purposes.

(G) *Allocation of assets between spouses.*

(1) The tax imposed pursuant to this article shall not apply to any deed, instrument or writing which transfers, divides or allocates community, quasi-community or quasi-marital property assets between spouses for purposes of effecting a division of the same, which is required by a judgment decreeing a dissolution of the marriage or legal separation, by a judgment of nullity, or by any other judgment or order rendered pursuant to the Family Code, or by a written agreement between the spouses, executed in contemplation of such judgment or order, whether or not it is incorporated as part of the judgment or order.

(2) The deed, instrument or writing shall include a written recital, signed by either spouse, stating that it is entitled to the exemption.

(H) *Certain deeds with agreement for purchaser to reconvey.* The tax imposed pursuant to this article shall not apply with respect to any deed, instrument, or other writing by which realty is conveyed by the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, pursuant to an agreement whereby the purchaser agrees to immediately reconvey the realty to the exempt agency.

(I) *Certain conveyances involving nonprofit corporation.* The tax imposed pursuant to this article shall not apply with respect to any deed, instrument, or other writing by which the State of California, any political subdivision thereof, or agency or instrumentality of either thereof, conveys to a nonprofit corporation realty the acquisition, construction, or improvement of which was financed or refinanced by obligations issued by the nonprofit corporation on behalf of a government unit, within the meaning of § 1.103-1(b) of Title 26 of the Code of Federal Regulations.

(J) *Certain conveyances involving inter vivos gift or death.* Any tax imposed pursuant to this part shall not apply to any deed, instrument, or other writing which purports to grant, assign, transfer, convey, divide, allocate, or vest lands, tenements, or realty, or any interest therein, if by reason of such inter vivos gift or by reason of the death of any person, such lands, tenements, realty, or interests therein are transferred outright to, or in trust for the benefit of, any person or entity.

(Ord. 969, § 9, 2018)

### **§ 5.03.005 CLAIMS OF EXEMPTION.**

Except as otherwise provided by law, every person who records a deed, instrument or writing which he or she claims is exempt from the tax imposed pursuant to this article shall declare in writing, under penalty of perjury, in the manner and form prescribed by the recorder, the reason why it is exempt under law. For the County of San Benito this is defined as being placed on the first page of the deed, the Revenue and Taxation Code or in the event of a government document the Government Code shall be stated and defined as to the reason of exemption.

(Ord. 969, § 11, 2018)

### **§ 5.03.006 REVENUE AND TAXATION CODE REQUIREMENTS.**

Every deed, instrument or writing by which lands, tenements or other realty in the County is sold, granted, assigned, transferred or otherwise conveyed shall have noted upon it the declared amount of required transfer tax with the exemption of those that are declaring "No Transfer Tax" due. The County Recorder shall not record any such deed, instrument or writing unless a correct and valid Revenue and Taxation Code for said exemption is stated on the first page, in or near the statement of declaration.

(Ord. 969, § 13, 2018)

### **§ 5.03.007 ASSESSOR'S PARCEL NUMBER REQUIREMENTS.**

(A) Every deed, instrument or writing by which lands, tenements or other realty in the County is sold, granted, assigned, transferred or otherwise conveyed shall have noted upon it the assessor parcel number. The number required by this section shall be used solely for administrative and procedural purposes. It shall not constitute proof of title. In the event of conflicts, the stated legal description shall govern. The validity of any such deed, instrument or writing shall not be affected by the fact that the assessor parcel number noted on it is erroneous or is omitted, and no liability shall attach to any person for such an error or omission.

(B) The County Recorder shall not record any such deed, instrument or writing unless the assessor parcel number is noted on it. The person who requests that such a document be recorded shall be charged with providing the County Recorder with the correct assessor parcel number.

(Ord. 969, § 15, 2018)

### **§ 5.03.008 [RESERVED.]**

### **§ 5.03.009 CREDIT AGAINST TAX.**

If the legislative body of any city located in the county imposes a tax pursuant to Revenue and Taxation Code § 11911(b), equal to one-half the amount specified in § 5.03.002, a credit shall be granted against the taxes due under this article in the amount of the city's tax.

(Ord. 969, § 19, 2018)

### **§ 5.03.010 TAX AS A DEBT.**

The amount of any tax imposed by this article shall be deemed a debt owed to the county. Any person owing the tax shall be liable in an action brought in the name of the county for the recovery of such debt. The provisions of this section shall not be deemed a limitation upon the right of the county to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax imposed by this article or the failure to comply with any of the provisions thereof.

(Ord. 969, § 21, 2018)

### **§ 5.03.011 ADMINISTRATION; ALLOCATION OF COLLECTED FUNDS.**

(A) The County Recorder shall administer this article and shall also administer any ordinance adopted by any city in the county pursuant to Part 6.7 (commencing with § 11901) of Division 2 of the Revenue and Taxation Code imposing a tax for which a credit is allowed by this article.

(B) On or before the fifteenth day of the month the County Recorder shall report to the County Auditor the amounts of taxes collected during the preceding month pursuant to this ordinance and each such city ordinance. The County Auditor shall allocate and distribute monthly said taxes as follows:

(1) All monies which relate to transfers of real property located in the unincorporated territory of the County shall be allocated to the county.

(2) All monies which relate to transfers of real property located in a city in the county which has imposed a tax pursuant to said Part 6.7 (commencing with § 11901) of Division 2 of the Revenue and Taxation Code shall be allocated one-half to such city and one-half to the county.

(3) All monies which relate to transfers of real property located in a city in the county which imposes a tax on transfers of real property not in conformity with said Part 6.7 (commencing with § 11901) of Division 2 of the Revenue and Taxation Code shall be allocated to the county.

(4) All monies which relate to transfers of real property in a city in the county which does not impose a tax on transfers of real property shall be allocated to the county.

(Ord. 969, § 23, 2018)

### **§ 5.03.012 PREREQUISITES TO RECORDATION.**

(A) The County Recorder shall not record any deed, instrument or writing subject to the tax imposed pursuant to this article unless the tax is paid at the time of recording. A declaration of the amount of tax due, signed by the party determining the tax or their agent, shall appear on the face of the document in compliance with Subdivision (B) of this section. The County Recorder may rely on said declaration if they have no reason to believe that the full amount of the tax due has not been paid. The declaration shall include a statement showing that the consideration or value on which the tax due was computed based on either:

(1) The full value of the property at the time of sale; or

(2) The full value of the property, less the value of any lien(s) and/or encumbrance(s) remaining on the interest or property conveyed at the time of sale.

(B) Every document subject to tax hereunder which is submitted for recordation shall show on the face of the document, the amount of taxes due under this article and the incorporated or unincorporated location of the lands, tenements, or other realty described in the document, and the recorder may rely thereon. If said lands, tenements or other realty are located within a city in the county, the name of the city shall be set forth. If said lands, tenements or other realty are located in the unincorporated area of the county, that

fact shall be set forth.

(Ord. 969, § 25, 2018)

### **§ 5.03.013 REFUND CLAIMS.**

Claims for refunds of taxes imposed pursuant to this article shall be governed by the provisions of Chapter 5 (commencing with § 5096) of Part 9 of Division 1 of the Revenue and Taxation Code.

(Ord. 969, § 27, 2018)

### **§ 5.03.014 MANNER OF GIVING NOTICE.**

(A) Any notice required to be given hereunder by the County Recorder or the Board of Supervisors, to any person shall be sufficiently given or served if it is personally served upon such person or if it is deposited, postage prepaid, in a post office letter box addressed to the person at the address for such person given on a document or a refund claim form, or if no such address is available, to the person at the official address maintained by the County Treasurer-Tax Collector for mailing of tax bills levied against the real property that was transferred without full payment of tax or, if no such address is available, to the person at the address of said real property. Notice shall be deemed effective when it is deposited in the mail.

(B) The failure of the owner or any other person to receive any notice required by this article to be given shall not affect the validity of any proceedings taken pursuant thereto.

(Ord. 969, § 29, 2018)

### **§ 5.03.015 RECORDS OF PERSONS LIABLE.**

Whenever the County Recorder has reason to believe that the full amount of tax due under this article has not been paid, they may, by notice served upon any person liable therefor, require them to furnish a true copy of their records relevant to the amount of the consideration or value of the interest or property conveyed.

(Ord. 969, § 31, 2018)

### **§ 5.03.016 UNLAWFUL ACTIVITIES DESIGNATED; MISDEMEANOR.**

(A) Any person or persons who makes, signs, issues or accepts or causes to be made, signed, issued or accepted and who submits or causes to be submitted for recordation any deed, instrument or writing subject to the tax imposed by this ordinance and makes any material misrepresentation of fact for the purpose of avoiding all or any part of the tax imposed by this article shall be guilty of a misdemeanor.

(B) No person or persons shall be liable, either civilly or criminally, for any unintentional error made in designating the location of the lands, tenements or other realty described in a document subject to the tax imposed by this article.

(Ord. 969, § 33, 2018)

### **§ 5.03.017 OPERATIVE DATE.**

This ordinance shall become operative 30 days after its adoption.

(Ord. 969, § 35, 2018)



**County of San Benito**  
**TRANSFER TAX AFFIDAVIT**

Area for Recorder Use Only

**Per San Benito County Ordinance Code 5.03.001**

**NOTICE:** Any material misrepresentation of fact in this affidavit is a misdemeanor under section 5.03.016 of the San Benito County Real Property Transfer Tax code. Any person who makes such a representation is subject to prosecution for such offense and the County Clerk-Recorder reserves the right to report potentially fraudulent recordings to the District Attorney's Office.

**This form must accompany any document that requires or may require Documentary Transfer Tax**

**LOCATION OF PROPERTY:** Assessor's Parcel \_\_\_\_\_ City/Unincorporated:

Street Address: \_\_\_\_\_

**IS THIS A FORECLOSURE OR TRUSTEE SALE IN FAVOR OF BENEFICIARY?**  Yes  No

(If no, complete Taxable Transactions Table)(If yes, please complete below and Exemption Statement section)

Name of Trustee and recorded document reference:  
\_\_\_\_\_

**IS THIS A LEASE, GREATER THAN 35 YEARS?**  Yes  No

(If yes, complete Taxable Transactions Table)(If no, complete Exemption Section)

**IS THIS A GIFT IN WHOLE OR IN PART?**  Yes  No (If yes, give a complete explanation and complete Exemption Section)

Name of the Donor: \_\_\_\_\_

Name of the Donee: \_\_\_\_\_

Please be aware that certain gifts may trigger a Federal Gift Tax. In such cases, the Transferor/Donor may be required to fill out a Form 709 (Federal Gift Tax Return) with the Internal Revenue Service. Please also be aware that the information stated on this document may be given to and used by governmental agencies, including the Internal Revenue Service.

*I, as the Transferor/Donor declare under penalty of perjury that I have read the above paragraph and acknowledge that a Federal Gift Tax may be triggered.*

Signature of above named Donor \_\_\_\_\_

**ARE YOU ADDING OR REMOVING A CO-OWNER FOR REFINANCING PURPOSES?**  Yes  No

If yes, initial to the right to indicate your agreement with the statement below and sign on reverse. Initial here \_\_\_\_\_

*The proportional ownership interest will revert back to its original holding within one (1) month from the date of recording; otherwise I will pay the applicable transfer tax.*

**ARE YOU MOVING TITLE INTO OR OUT OF A TRUST?**  Yes  No

Name and date of Trust: \_\_\_\_\_

c. Name of Trustor(s): \_\_\_\_\_

Name(s) of Currently Active Trustee(s): \_\_\_\_\_



**IS THIS A TRANSFER BETWEEN LEGAL ENTITIES?**  Yes  No

If yes, transfers involving legal entities must provide, preferably one (1) week in advance, applicable documentation. Some examples are listed below. This type of transaction can require 1-3 business days to review.

**Corporation**, copy of the Articles of Incorporation amendments and any other documents showing the shares issued and share ownership; or **LLC**, copy of the Operating Agreement, amendments, and any other documentation showing the partners ownership percentage; or **Partnership**, copy of the Partner Agreement, amendments and any other documents showing the partners ownership percentage

**EXEMPTION STATEMENT**

I CLAIM THAT THIS TRANSACTION IS EXEMPT FROM DOCUMENTARY TRANSFER TAX BECAUSE:

(The Sections listed below are taken from the Revenue and Taxation Code. Please check one or explain in "Other".)

1. \_\_\_ Section 11911. The document is a lease for a term of *less* than thirty-five (35) years (including options).
2. \_\_\_ Section 11911. The easement is *not* perpetual, permanent, or for life.
3. \_\_\_ Section 11921. The instrument was given to secure a debt.
4. \_\_\_ Section 11922. The conveyance is to a governmental entity or political subdivision.
5. \_\_\_ Section 11925. The transfer is between individuals and a legal entity, or between legal entities, and does not change the proportional interests held.
6. \_\_\_ Section 11926. The instrument is from a trustor to a beneficiary, in lieu of foreclosure, and no additional consideration was paid.
7. \_\_\_ Section 11926. The grantee is the foreclosing beneficiary and the consideration paid by the foreclosing beneficiary does not exceed the unpaid debt.
8. \_\_\_ Section 11927. The conveyance relates to dissolution of marriage or legal separation.
9. \_\_\_ Section 11930. The conveyance is an *inter vivos* gift\* or a transfer by death.
10. \_\_\_ Section 11930. The conveyance is to the grantor's revocable living trust.
11. \_\_\_ Other (Include explanation and authority) \_\_\_\_\_

**TAXABLE TRANSACTIONS**

Complete the following and calculate the tax below. Tax is calculated as \$0.55 per \$500 of line D.

Example, \$100,000 value/\$500 increments = 200. 200 increments x \$0.55 = \$110 in tax due. You may also use \$1.10 per \$1000 of line 9D. Always round up to the next 500.

A)	Consideration paid or value	\$ _____
B)	( <input type="checkbox"/> Full cash value <input type="checkbox"/> less liens)	\$ _____
C)	If less liens, loan amount assumed	\$ _____
D)	Total consideration or value less liens (Line A minus line C)	\$ _____
	Tax due	\$ _____

**I DECLARE OR AFFIRM UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Are you the  Transferee,  Transferor,  both, or  Representative with full knowledge of foregoing. Signature still required.

SIGNATURE(S) OF NAME OF BUYER/TRANSFeree/REPRESENTATIVE	DATE
NAME(S) OF BUYER/TRANSFeree/REPRESENTATIVE (PLEASE PRINT)	