

<b>Topic:</b>	Real Estate Transfer Fee
<b>Resource Type:</b>	Regulations
<b>State:</b>	South Carolina
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Hilton Head Island
<b>Year (adopted, written, etc.):</b>	1991
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Hilton Head Island Real Estate Transfer Fee Ordinance
<b>Document Last Updated in Database:</b>	April 6, 2017

### ***Abstract***

Hilton Head's Real Estate Transfer Fee is the only one of its kind in the state of South Carolina because it was enacted three years prior to the General Assembly's adoption of S.C. Code Ann. § 6-1-70, which forbade real estate real estate transfer fees and taxes. However, § 6-1-70 grandfathered all such fees that were in existence prior to January 1, 1991. The year prior to the General Assembly's adoption of § 6-1-70, the Supreme Court of South Carolina upheld the ordinance as "necessary and proper for the general welfare of the citizens of Hilton Head Island" in *Williams v. Town of Hilton Head Island*.

The Town of Hilton Head Island considers the real estate transfer fee a success. Since 1991, it has raised \$23 million dollars through the modest tax, which has been used to preserve natural areas, open space, and parks throughout the island.

### ***Resource***

#### **Town of Hilton Head Island, SC Chapter 5 REAL ESTATE TRANSFER FEE**

##### **Sec. 4-5-10. Definitions.**

The following definitions shall apply:

*Open space:* A land use, public or private, which is not devoted to residential, commercial, industrial, or institutional uses (or mixtures of these uses) but is left to permanent wilderness or prescribed active noncommercial recreational use.

*Purchaser:* The transferee, grantee, or recipient of any land, tenement, or other realty.

*Purchase price:* The consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale.

*Recreation:* Human activity, either passive or active, of noncommercial nature.

*Scenic easements:* A parcel of land upon which certain described rights, affecting aesthetic visual sight lines, have been restricted or reserved from development in order to preserve the public enjoyment, as well as the value of contiguous properties.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 95-21, § 1, 9-27-95)

#### **Sec. 4-5-20. Real estate transfer fee.**

For a period of twenty-four (24) years, ending on December 31, 2024, a real estate transfer fee shall be paid by the purchaser, or any other person by his direction, pursuant to the recording in Beaufort County of any deed, instrument or writing whereby any land, tenement, or other realty located within the corporate limits of the Town of Hilton Head Island is sold, granted, assigned, conveyed to, vested in, or otherwise transferred when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds one hundred dollars (\$100.00).

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 95-21, § 2, 9-27-95; Ord. No. 00-09, § 1, 3-7-00)

#### **Sec. 4-5-30. Intent.**

Conservation efforts and the maintenance of environmental quality are integral parts of balanced growth. Success in directing future growth and protecting our unique environment will be measured by generations to come in the vital resource areas set aside for conservation use and the quality of the experience realized. It is intended that the majority of land set aside under this chapter shall be kept in perpetuity as close as possible in its natural state and it shall not be overly invaded with permanent structures.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

#### **Sec. 4-5-40. Purpose.**

(a) To acquire fee and less than fee interest in land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements, to include the following types of land: ocean, harbor and pond frontage in the form of beaches, dunes and adjoining backlands; barrier beaches; fresh and saltwater marshes and adjoining uplands; land for bicycle paths; land protecting existing and future; public water supply, well fields, highway

buffering and aquifer recharge areas; and land for wildlife preserves; and land for future public recreational facilities.

(b) To acquire already developed land or development rights in order to convert its use to a public use, to restore the property to open space, or to redefine that property in accordance with the town's current comprehensive plan and dispose of it as soon as possible.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

**Sec. 4-5-50. Fee established.**

There is hereby imposed a fee equal to one quarter of one (.0025) percent of the purchase price upon the transfer of any real property interest in any real property situated in the Town of Hilton Head Island.

Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91

**Sec. 4-5-80. Exemptions.**

The requirements of this chapter shall not apply:

(1) When the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, is one hundred dollars (\$100.00) or less; or

(2) When the conveyance is effected pursuant to a court order; or

(3) When the grantee of such land is the United States of America or the State of South Carolina or any of their political subdivisions or departments for a public purpose.

(4) To transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(5) To transfers made as gifts without consideration. In any proceeding to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.

(6) To transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of the trust to the beneficiaries of such trust.

(7) To transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(8) To transfers to any charitable organization or any religious organization provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes. Charitable organizations are defined in Section 33-55-20, South Carolina Code of Laws, 1976, (as amended).

(9) To transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee from foreclosing said mortgage.

(10) To transfers from escrow agents, trustees, or sellers to purchasers who have held the right to occupy the property prior to the enactment of this chapter and for which the recording of the deed has been held in abeyance pending the final payment of purchase money debt.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

#### **Sec. 4-5-90. Payment of fee.**

The fee shall be the liability of the purchaser of such real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be paid at the time the deed, instrument, or writing is recorded to the Beaufort County Office of Register of Mesne Conveyances, which shall collect and disburse such monies pursuant to written agreement with the town.

#### **Sec. 4-5-100. Deed recording requirements.**

Any deed transferred for property located within the town limits must contain the district map and parcel number for each property conveyed. The fee shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the penalty of perjury by the purchaser or his legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The affidavit shall also contain the name of payor of the fee and current mailing address.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91)

#### **Sec. 4-5-110. Separate account.**

An interest-bearing, restricted account to be known as the Town of Hilton Head Island Land Bank Fund is hereby established and all revenues received from the transfer fee shall be placed in this account which shall be controlled by the town manager. The revenue from this account shall be expended only as stated in sections 4-5-40 and 4-5-60. Deposits into this account shall also include (a) funds appropriated to be deposited by town council; (b) voluntary contributions of money and other liquid assets to the fund; and (c) proceeds

from disposal of real property or interests. The town manager shall prudently invest available assets of the fund, and all income thereon shall accrue to the fund. The town manager shall keep a full and accurate account of its actions, including a record as to when, from, or to whom, and on what account money has been paid or received relative to this chapter.

(Ord. No. 90-26, § 1, 10-1-90; Ord. No. 91-1, § 1, 1-21-91; Ord. No. 94-35, § 2, 4-18-94; Ord. No. 95-21, § 5, 9-27-95)

#### **Sec. 4-5-120. Appeal.**

In cases of interpretation of this chapter, particularly regarding fee exemptions, the Register of Mesne Conveyances shall refer the question to the town manager or his designee who will make the final decision.

(1) Any person aggrieved by a decision regarding this chapter or a denial of an exemption by the town manager or his designee may appeal the decision to town council by written request, stating the reasons therefore, filed with the town clerk within ten (10) days after the payment of the fee.

(Ord. No. 91-1, § 1, 1-21-91)