SPONSOR: Rep. Schwartzkopf & Sen. McBride & Rep. Longhurst & Rep. Viola & Rep. Paradee & Rep. K. Williams & Sen. Poore & Sen. Marshall & Rep. Bennett
Reps. Brady, Briggs King, Collins, Heffernan, Hensley, Jaques, Q. Johnson, Kowalko, Potter, Ramone, B. Short, D. Short, Spiegelman, Wilson, Yearick; Sens. Bushweller, Lopez, Walsh

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 380
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 9 AND 30 OF THE DELAWARE CODE RELATING TO REALTY TRANSFER TAX.

Section 1. Amend Chapter 54, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly:

§ 5401. Definitions.

As used in this subchapter, except where the context clearly indicates a different meaning:

(2) "First-time home buyer" means any one of the following:

a. A natural person who has at no time held any direct legal interest in residential real estate, wherever located, and who intends to occupy the property being conveyed as his or her principal residence within 90 days following the transaction.

b. Spouses purchasing as joint tenants or tenants by the entirety, when neither spouse has ever held any direct legal interest in residential real estate, wherever located, and both of whom intend to occupy the property being conveyed as their principal residence within 90 days following the transaction.

c. Individuals purchasing as joint tenants or cotenants, when none of the individuals has ever held any direct legal interest in residential real estate, wherever located, and both of whom intend to occupy the property being conveyed as their principal residence within 90 days following the transaction.

§ 5402. Rate of tax; when payable; exception [For application of this section, see 81 Del. Laws, c. 56, § 2]

(a) Every person who makes, executes, delivers, accepts or presents for recording any document, except as defined or described in § 5401(4) of this title, or in whose behalf any document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or any part thereof, a realty transfer tax at the rate of 3 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 1 1/2 percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of

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Title 9, in which case 2 1/2 percent, which tax shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording. Said tax is to be apportioned equally between grantor and grantee.

(b) No tax shall be imposed on conveyances when the actual value of the property being transferred is less than $100.

(c) ~~Notwithstanding subsection (a) of this section, where a valid written contract is entered into prior to August 1, 1971, the tax for such a transfer shall be at the rate imposed prior to August 1, 1971.~~ Notwithstanding subsection (a) of this section, for any first-time home buyer who enters into a transaction, on or after August 1, 2017, who would otherwise be subject to the rate of tax set forth in subsection (a) of this section, that portion of the realty transfer tax payable by the first-time home buyer shall be reduced by an amount equal to 1/2 percent multiplied by the lesser of the value of the property or $400,000. The first-time home buyer reduction set forth in this subsection shall apply to the grantee's portion of the realty transfer tax as defined in subsection (a) and shall not relieve the grantor from payment of the grantor's portion of the realty transfer tax as defined in subsection (a).

(d) Every person who makes, executes, delivers, accepts or presents for recording any document defined or described in § 5401(4) of this title, or in whose behalf any such document is made, executed, delivered, accepted or presented for recording shall be subject to pay for and in respect to the transaction, or in any part thereof, a realty transfer tax at the rate of 3 percent of the value of the property represented by such document, unless the municipality or county where the property is located has enacted the full 1 1/2 percent realty transfer tax authorized by § 1601 of Title 22 or § 8102 of Title 9, in which case 2 1/2 percent, which tax shall be payable as follows:

(1) The tax on the consideration attributed to the first year of the term shall be payable at the time of making, execution, delivery, acceptance or presenting of such document for recording;

(2) The tax on the consideration attributed to each successive year of the term thereafter shall be paid annually to the Division of Revenue.

(e) There shall be no tax imposed on any document described in § 5401(4) of this title entered into prior to July 7, 1973.

(f) Notwithstanding subsection (a) of this section, the rate of tax on documents described in § 5401(8) of this title shall be 2 percent on amounts exceeding $10,000, which shall be borne by the owner of the building whose construction is made subject to tax under § 5401(8) of this title.

Section 2. Amend § 8102, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8102. Transfers of real property subject to county taxation.

(a) Notwithstanding any statute to the contrary, the county government of each county shall have the power by ordinance to impose and collect a tax, to be paid by the transferor or transferee as determined by the county, upon the transfer of real property within the unincorporated areas of the county; provided however, that any realty transfer tax which is imposed by any county government shall not be greater than 1 1/2 percent of the value of the real property as represented by the document transferring the property; and further provided, that the county government shall ~~by ordinance~~ exempt from such taxation ~~first time~~ "first time home buyers", as that term is defined in § 5401 of Title 30, up to at least the value of the property or $400,000 whichever is less and such county may by ordinance increase the exemption amount. Any revenues from a tax upon the transfer of real property derived from an ordinance hereinafter adopted by the government of Kent County pursuant to the provisions of this section shall first be dedicated for and applied to Kent County's cost component of the Statewide Paramedic Funding Program as is more particularly set forth in § 9814 of Title 16.

Section 3. The credit provided for under this Act is intended to be retroactive and shall be available to any first-time home buyer who enters into a transaction for the transfer of real estate on or after August 1, 2017, pursuant to a contract dated on or after August 1, 2017. Refund requests for realty transfer taxes already paid shall be made directly to the Division of Revenue on forms to be prescribed by the Division of Revenue.

Section 4: This Act shall be effective upon enactment.