

LEGISLATIVE DIGEST

[Business and Tax Regulations Code – Eliminate Transfer Tax Foreclosure Exemption and Relieve Foreclosed Homeowners of Liability]

Motion ordering submitted to the voters an ordinance authorizing the “Ordinance amending the San Francisco Business and Tax Regulations Code, Article 12-C, Real Property Transfer Tax, by repealing Section 1108.2 to eliminate the foreclosure exemption and amending Section 1103 to relieve foreclosed homeowners from tax liability” at an election to be held on November 6, 2012.

Existing Law

Article 12-C, the Real Property Transfer Tax Ordinance, taxes deeds, instruments or writings that transfer lands, tenements, or other realty sold in the City. The tax rate ranges from \$2.50 to \$12.50 for each \$500 increment of consideration or value.

A lender taking ownership of a property from a borrower through or in lieu of foreclosure is a transaction subject to the transfer tax. Section 1108.2, "Exemption; Deeds in Lieu of Foreclosure, Etc.", exempts from tax a portion of the consideration given by a lender through or in lieu of foreclosure. Only the portion of the consideration that exceeds the unpaid debt, including accrued interest and cost of foreclosure, is subject to the transfer tax.

Section 1103, "Payment of Tax", provides that both the person who makes, signs or issues the document subject to tax, and the person for whose use or benefit the document is made, are liable for the tax. In a foreclosure or a deed in lieu of foreclosure, both the lender and the borrower are liable for the tax.

Amendments to Current Law

Section 1 repeals Section 1108.2 to remove the partial exemption available to lenders taking ownership of a property under foreclosure or in lieu of foreclosure. Section 2 amends Section 1103 to relieve the borrower from transfer tax liability only in the case where the property being foreclosed upon is the borrower's principal residence.

Background Information

The intent of this Ordinance is to remove the partial exemption from transfer tax that is available to foreclosing lenders, and protect homeowners who are foreclosed upon from liability for the tax.