

Land Bank Act Section 12 Exemptions

SECTION 12. The following transfers of real property interests shall be exempt from the fee established by section ten. Except as otherwise provided, the purchaser shall have the burden of proof that any transfer is exempt hereunder. Any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading the fee imposed by section 10.

(-a-) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions.

(-b-) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(-c-) Transfers made as gifts without consideration. In any proceeds 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 and the amount of consideration claimed by the purchaser to have been paid or 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.

(-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(-e-) 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.

(-f-) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(-g-) Transfers to any charitable organization as defined in clause Third of section five of chapter fifty-nine of the General Laws, 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.

(-h-) 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 in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(-i-) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(-j-) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property, including real property interests and other

property received, which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferee receives property, including real property interests and other property received, which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(-k-) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(-l-) Transfers of property consisting in part of real property interests situated in Nantucket county and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Nantucket county; provided that the purchaser shall furnish the Commission with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(-m-) An amount determined on or before January 1 of each year by the land bank commission after due analysis of the range of real estate prices and in no event less than \$400,000 of the purchase price of a transfer made to a purchaser who, or whose spouse at the time of transfer, has at no time before the said transfer owned or possessed any real property interest as defined in section 1 either within or without Nantucket county; but the purchaser shall make the real property interest which is the subject of the transfer the purchaser's actual domicile within 1 year of the time of transfer, and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode. In the event of a later transfer within 5 years of the transfer exempted from the fee under this paragraph, other than the transfer of a mortgage to an institutional lender, the fee exempted shall become due, together with the accumulated interest and penalties, and in addition to any fee otherwise due as a result of the later transfer. The purchaser shall certify as to the foregoing, and the Commission shall attach to the deed a certificate which shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this subsection have been met.

(-n-) Transfers of minority interests in corporations, trusts, partnerships, or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

(-o-) Transfer of a real property interest that is subject to and used consistent with an affordable housing restriction; provided, however, that the affordable housing restriction has a term remaining at the time of the transfer of not less than 5 years; and provided further, that the purchaser shall make the real property interest, that is the subject of the transfer, the purchaser's actual domicile within 2 years of the time of transfer and shall remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode for a period lasting not less than the fifth anniversary of the transfer. Notwithstanding this paragraph, if the real property interest is transferred again within 5 years and the later transfer complies with this paragraph, a fee, interest or penalty shall not be due. If the holder of an affordable housing restriction determines within 5 years of the transfer that the real property interest to which it pertains is not being used consistent with the requirements of the affordable housing restriction or if a later transfer within 5 years that (sic) does not comply with this paragraph, the fee exempted hereunder shall become due, together with the accumulated interest and penalties calculated from the date of the transfer exempted hereunder. The purchaser shall certify as to the foregoing and the commission shall attach to the deed a certificate that shall recite the fact that there is running with the land a lien equal to the amount of the fee exempted plus accumulated interest and penalties until such time as all conditions of this paragraph have been met.