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Philadelphia Amends Realty Transfer Tax Law to Clarify Intent of 2017 Amendment

On May 15, Mayor Kenney signed into law bill No. 190135 in an attempt to improve Philadelphia's realty transfer tax laws and "eliminate any manufactured disputes" regarding the consideration paid for an interest in a real estate company. Generally, a "real estate company" is defined as a company primarily engaged in the business of holding, selling or leasing real estate. The Philadelphia realty transfer tax is imposed once a real estate company becomes an "acquired real estate company" (as defined in the Philadelphia Code).

The bill follows (and clarifies) previous changes that drastically impacted Philadelphia's realty transfer tax laws. Effective July 1, 2017, a real estate company is treated as an acquired real estate company and owes Philadelphia transfer tax upon a 75% or more change of ownership in the company within a six-year period. Previously, a real estate company owed Philadelphia transfer tax upon a 90% or more change of ownership within a three-year period. This change replaced "89-11" transactions with "74-26" transactions, making it more onerous for real estate professionals to structure transactions to avoid paying Philadelphia transfer tax, which is currently 3.278%.¹ It remains unclear whether buyers and sellers of real estate in Philadelphia are utilizing 74-26 transactions, as many believe this change made these transactions too difficult to pursue.

Additionally, effective July 1, 2017, rather than using computed value (which is the value assessed by the city's Office of Property Assessment multiplied by the common level ratio) to calculate the realty transfer tax base for the real estate of an acquired real estate company, the realty transfer tax base is presumed to be the "actual consideration" paid for the company. The new law, which is effective immediately, makes clear that the actual consideration paid for the interest in a real estate company as part of a bona fide arm's-length sale includes any liens or other encumbrances on the real estate existing before the transfer and not removed by the transfer. This change increases the realty transfer tax base, thereby increasing the amount of transfer tax, in scenarios where the purchaser of an interest in a real estate company assumes the mortgage (and other encumbrances) on the real estate of the company it purchases. The Philadelphia City Council believes the new law puts taxpayers who sell real estate via acquired real estate companies "on the same footing as ordinary citizens who sell real estate without such devices." This change, however, may further incentivize real estate professionals who buy and sell real estate via acquired real estate companies to satisfy all encumbrances on the real estate upon the transfer.

¹ This rate does not include the Commonwealth of Pennsylvania's realty transfer tax rate of 1%.

If you have any questions or would like additional information regarding the recent changes to the Philadelphia realty transfer tax laws, please contact [Christopher W. Rosenbleeth](mailto:Christopher.W.Rosenbleeth@stradley.com) at CRosenbleeth@stradley.com or [Jason J. Guss](mailto:Jason.J.Guss@stradley.com) at JGuss@stradley.com.