

Chapter 57

COMMUNITY PRESERVATION

GENERAL REFERENCES

Conservation easements — See Ch. 56.

Subdivision of land — See Ch. 120.

Farming — See Ch. 72.

Zoning — See Ch. 143.

ARTICLE I

Community Preservation Fund; Community Preservation Advisory Board**[Adopted 9-19-2006 by L.L. No. 6-2006]****§ 57-1. Definitions.**

As used in this article, the following words and terms shall have the meanings indicated:

ADVISORY BOARD — The Town of Red Hook Community Preservation Fund Advisory Board created under this article.

COMMUNITY PRESERVATION — Includes the following:

- A. Preservation of open space;
- B. Establishment of parks, nature preserves, or recreational areas;
- C. Preservation of land which is predominantly viable agricultural land, as defined in Subdivision 7 of § 301 of the Agriculture and Markets Law, or unique and irreplaceable agricultural land, as defined in Subdivision 6 of § 301 of the Agriculture and Markets Law;
- D. Preservation lands of exceptional scenic value;
- E. Preservation of freshwater and saltwater marshes or other wetlands;
- F. Preservation of aquifer recharge areas;
- G. Preservation of undeveloped beach lands or shoreline;
- H. Establishment of wildlife refuges for the purpose of maintaining native animal species diversity, including the protection of habitat essential to the recovery of rare, threatened or endangered species;
- I. Preservation of unique or threatened ecological areas;
- J. Preservation of rivers or river areas in natural, free-flowing condition;
- K. Preservation of forested land;
- L. Preservation of public access to lands for public use, including stream rights and waterways;
- M. Preservation of historic places and properties listed on the New York State Register of Historic Places and/or protected under a municipal historic preservation ordinance or law; and
- N. Undertaking any of the purposes of this subdivision in furtherance of the establishment of a greenbelt.

FUND — The Town of Red Hook Community Preservation Fund established by this article.

§ 57-2. Fund established.

- A. The Town of Red Hook Community Preservation Fund is hereby established pursuant to § 64-h of the Town Law.
- B. Deposits into the fund may include revenues of the Town from whatever source and shall include all revenues from the real estate transfer tax imposed by the Town pursuant to Article II of this chapter as authorized by Chapter 443 of the Laws of 2006, and pursuant to Article 31-A-1 of the Tax Law of the State of New York.
- C. The fund shall also be authorized to accept gifts of any such interests in land or of funds. Interest accrued by monies deposited in the fund shall be credited to the fund.
- D. In no event shall monies deposited in the fund be transferred into any other account.
- E. Nothing contained in this section shall be construed to prevent the financing, in whole or in part, pursuant to the Local Finance Law of the State of New York, of any acquisition authorized pursuant to this chapter. Monies from the fund may be utilized to repay any indebtedness or obligations incurred pursuant to the Local Finance Law of the State of New York, consistent with effectuating the purposes of this article.

§ 57-3. Purposes of fund.

- A. The purposes of the fund shall be exclusively:
 - (1) To implement a plan for the preservation of community character as required by § 64-h of the Town Law;
 - (2) To acquire interests or rights in real property for the preservation of community character within the Town, including villages therein, in accordance with said plan;
 - (3) To establish a bank pursuant to a transfer of development rights program consistent with § 261-a of the Town Law; and
 - (4) To provide a management and stewardship program for such rights and interests, consistent with this article and in accordance with said plan designed to preserve community character.
- B. The acquisition of interests and rights in real property under the fund shall be in cooperation with willing sellers.
- C. Not more than 10% of the fund shall be utilized for the management and stewardship program provided for in Subsection A(4) of this section.
- D. If the implementation of the Community Preservation Project Plan adopted by the Town Board as provided in Subdivision 7 of § 64-h of

the Town Law has been completed, and funds are no longer required for the purposes outlined in this section, any remaining monies in the fund shall be applied to reduce any bonded indebtedness or obligations incurred to effectuate the purposes of this section.

- E. Any monies expended from the fund shall be consistent with the purposes set forth in § 57-3, the definition of "community preservation" set forth in § 57-1 and, for a period not exceeding 12 months following the effective date of Article II of this chapter, the Town's Open Space Plan adopted September 5, 2006. Thereafter such monies shall only be expended in accordance with the Community Preservation Project Plan adopted by the Town Board in accordance with Subdivision 7 of § 64-h of the Town Law.
- F. If at any time during the life of the fund a transfer of development rights program is established to protect community character as provided for and in compliance with § 261-a of the Town Law, the Town may utilize monies from the fund in order to create and fund a central bank of the transfer of development rights program. If at any time a transfer of development rights program is repealed by the Town, all monies from the central bank shall be returned to the fund.

§ 57-4. Advisory Board established.

- A. An Advisory Board is hereby established to review and make recommendations on proposed acquisitions of interests in real property using monies from the fund.
- B. Such Board shall consist of seven members who shall be residents of the Town and who shall serve without compensation. No member of the Town Board shall serve on the Advisory Board. Members initially appointed to the Board shall serve staggered terms as follows: three members shall be appointed for three-year terms, two members shall be appointed for a two-year terms, and two members shall be appointed to one-year terms. Thereafter, members shall serve three-year terms.
- C. A majority of the members appointed shall have demonstrated experience with conservation or land preservation activities. At least one member of the Advisory Board shall be an active farmer. Board members' terms shall be staggered.
- D. The Board shall act in an advisory capacity to the Town Board.

§ 57-5. Public hearing prior to land acquisition; exception.

- A. No interest or right in real property shall be acquired by the fund until a public hearing is held as required by § 247 of the General Municipal Law.
- B. Nothing herein shall prevent the Town Board from entering into a conditional purchase agreement before a public hearing is held.

- C. Any resolution of the Town Board approving an acquisition of land pursuant to this article shall find that acquisition was the best alternative for the protection of community character of all the reasonable alternatives available to the Town.

§ 57-6. Management of acquired lands.

- A. Rights or interests in real property acquired under this article shall be administered and managed in a manner which:
- (1) Allows public use and enjoyment in a manner compatible with the natural, scenic, historic, and open space character of such lands;
 - (2) Preserves the native biological diversity of such lands;
 - (3) With regard to open spaces, limits improvements to enhancing access for passive use of such lands, such as nature trails, boardwalks, bicycle paths and peripheral parking areas, provided that such improvements do not degrade the ecological value of the land or threaten essential wildlife habitat; and
 - (4) Preserves cultural property consistent with accepted standards for historic preservation.
- B. Notwithstanding any other provision of this § 57-6 there shall be no right to public use and enjoyment of land used in conjunction with a farm operation as defined by Subdivision 11 of § 301 of the Agriculture and Markets Law.
- C. The Town may enter into agreements with corporations, organized under the Not-For-Profit Corporations Law and engage in land trust activities to manage lands, including less than fee interests acquired pursuant to this chapter.
- D. Any such agreement shall contain a provision that such corporation shall keep the lands accessible to the public unless such corporation shall demonstrate to the satisfaction of the Town that public accessibility would be detrimental to the lands or any natural features associated therewith.

§ 57-7. Disposal of lands acquired with fund monies.

- A. Rights or interests in real property acquired with monies from the fund shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the purposes permitted by this chapter without the express authority of an act of the State Legislature, which shall provide for the substitution of other lands of equal environmental value and fair market value and reasonably equivalent usefulness and location to those to be discontinued, sold or disposed of, and such other requirements as shall be approved by the Legislature.

- B. Any conservation easements created under Title 3 of Article 49 of the Environmental Conservation Law, which are acquired with monies from such fund, may only be modified or extinguished as provided in § 49-0307 of such law. In addition to an act of the State Legislature, real property acquired with monies from the fund shall not be sold, leased, exchanged, donated or otherwise disposed of or used for other than the purposes permitted by this article, without a local law adopted by the Town Board. Said local law shall be adopted by a 4/5 majority and shall be subject to a mandatory referendum.
- C. Nothing in this Article I shall preclude the Town, by local law, from establishing additional restrictions to the alienation of lands acquired pursuant to this Article I. This § 57-7 shall not apply to the sale of development rights by the Town acquired pursuant to this article, where said sale is made by a central bank created by the Town, pursuant to a transfer of development rights program established by the Town pursuant to § 261-a of the Town Law. However, said development rights program shall provide that:
- (1) The lands from which said development rights were acquired shall remain preserved in perpetuity via a permanent conservation easement or other instrument that similarly preserves community character as defined in this article; and
 - (2) The proceeds from such sale shall be deposited in the fund.

ARTICLE II
Real Estate Transfer Tax
[Adopted 2-21-2007 by L.L. No. 1-2007¹]

§ 57-8. Definitions.

As used in this article, the following words and terms shall have the meanings indicated:

CONSIDERATION — The price actually paid or required to be paid for the real property or interest therein, including payment for an option or contract to purchase real property, whether or not expressed in the deed and whether paid or required to be paid by money, property, or any other thing of value. It shall also include the cancellation or discharge of an indebtedness or obligation. It shall also include the amount of any mortgage, purchase money mortgage, lien, or other encumbrance, whether or not the underlying indebtedness is assumed or taken subject to.

- A. In the case of the creation of a leasehold interest or the granting of an option with use and occupancy of real property, consideration shall include, but not be limited to, the value of the rental and other payments attributable to the use and occupancy of the real property or interest therein, the value of any amount paid for an option to purchase or renew, and the value of rental or other payments attributable to the exercise of any option to renew.
- B. In the case of the creation of a subleasehold interest, consideration shall include, but not be limited to, the value of the sublease rental payments attributable to the use and occupancy of the real property, the value of any amount paid for an option to renew, and the value of rental or other payments attributable to the exercise of any option to renew, less the value of the remaining prime lease rental payments required to be made.
- C. In the case of a controlling interest in any entity that owns real property, consideration shall mean the fair market value of the real property or interest therein, apportioned based on the percentage of the ownership interest transferred or acquired in the entity.
- D. In the case of an assignment or surrender of a leasehold interest or the assignment or surrender of an option or contract to purchase real property, consideration shall not include the value of the remaining rental payments required to be made pursuant to the terms of such lease or the amount to be paid for the real property pursuant to the terms of the option or contract being assigned or surrendered.

1. Editor's Note: This local law was subject to a mandatory referendum and received the affirmative vote of a majority of qualified electors voting at a special election 5-1-2007. Section VI of this local law also stated that the real estate transfer tax imposed by Article II shall expire and be deemed repealed as to any conveyance taking place after 12-31-2026.

- E. In the case of the original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor, and the subsequent conveyance by the owner thereof of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold for a cooperative unit other than an individual residential unit, consideration shall include a proportionate share of the unpaid principal of any mortgage on the real property of the cooperative housing corporation comprising the cooperative dwelling or dwellings. Such share shall be determined by multiplying the total unpaid principal of the mortgage by a fraction, the numerator of which shall be the number of shares of stock being conveyed in the cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold and the denominator of which shall be the total number of shares of stock in the cooperative housing corporation.

CONTROLLING INTEREST —

- A. In the case of a corporation, either 50% or more of the total combined voting power of all classes of stock of such corporation, or 50% or more of the capital, profits, or beneficial interest in such voting stock of such corporation.
- B. In the case of a partnership, association, trust, or other entity, 50% or more of the capital, profits, or beneficial interest in such partnership, association, trust or other entity.

CONVEYANCE — The transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment, surrender, mortgage foreclosure, transfer in lieu of foreclosure, option, trust indenture, taking by eminent domain, conveyance upon liquidation or by a receiver, or transfer or acquisition of a controlling interest in any entity with an interest in real property. Transfer of an interest in real property shall include the creation of a leasehold or sublease only where the sum of the term of the lease or sublease and any options for renewal exceeds 49 years, substantial capital improvements are or may be made by or for the benefit of the lessee or sublessee, and the lease or sublease is for substantially all of the premises constituting the real property. Notwithstanding the foregoing, conveyance of real property shall not include the creation, modification, extension, spreading, severance, consolidation, assignment, transfer, release or satisfaction of a mortgage; a mortgage subordination agreement, a mortgage severance agreement, or an instrument given to perfect or correct a recorded mortgage; or a release of lien of tax pursuant to this chapter or the Internal Revenue Code.

FUND — The Town of Red Hook Community Preservation Fund created and established pursuant to § 64-h of the New York Town Law and Article I of this chapter.

GRANTEE — The person who obtains real property or an interest therein as a result of a conveyance.

GRANTOR — The person making the conveyance of real property or interest therein. Where the conveyance consists of a transfer or an acquisition of a controlling interest in an entity with an interest in real property, "grantor" shall mean the entity with an interest in real property or a shareholder or partner transferring stock or partnership interest.

INTEREST IN REAL PROPERTY — Includes a title in fee, a leasehold interest, a beneficial interest, an encumbrance, development rights, air space and air rights, or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property. It shall also include an option or contract to purchase real property. It shall not include a right of first refusal to purchase real property.

PERSON — An individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, any combination of individuals, and any other form of unincorporated enterprise owned or conducted by two or more persons.

REAL PROPERTY — Every estate or right, legal or equitable, present or future, vested or contingent, in lands, tenements or hereditaments, including buildings, structures and other improvements thereon, which are located in whole or in part within the Town. It shall not include rights to sepulture.

RECORDING OFFICER — The County Clerk of the County of Dutchess.

TOWN — The Town of Red Hook.

TOWN SUPERVISOR — The Town Supervisor of the Town of Red Hook.

TREASURER (COUNTY TREASURER) — The Commissioner of Finance of the County of Dutchess, or such successor as by law may be authorized to serve as treasurer of the County of Dutchess.

§ 57-9. Imposition of real estate transfer tax.

There is hereby imposed in the Town of Red Hook a tax on each conveyance of real property or interest therein, as authorized by Article 31-A-1 of New York Tax Law, the rate of such tax to be 2% of the consideration for the conveyance. Revenues from such tax shall be deposited in the Town of Red Hook Community Preservation Fund established pursuant to Article I of this chapter and may be used solely for the purpose of said fund. Such tax shall apply to any conveyance occurring on or after the effective date of this article but shall not apply to conveyances made on or after such date pursuant to building written contracts entered into prior to such date, provided that the date of execution of such contract is confirmed by independent evidence such as the recording of the contract, payment of a deposit, or other facts and circumstances as determined by the County Treasurer.

§ 57-10. Payment of tax.

- A. The real estate transfer tax imposed pursuant to this article shall be paid to the Treasurer, or to the Recording Officer acting as the agent of the Treasurer upon designation as such agent by the Treasurer. Such tax shall be paid at the same time as the real estate transfer tax imposed by Article 31 of the New York Tax Law is required to be paid. Such Treasurer or Recording Officer shall endorse upon each deed or instrument effecting a conveyance a receipt for the amount of the tax so paid.
- B. A return shall be required to be filed with such Treasurer or Recording Officer for purposes of the real estate transfer tax imposed pursuant to this article at the same time as a return is required to be filed for purposes of the real estate transfer tax imposed by Article 31 of the Tax Law. The Treasurer shall prescribe the form of return, the information that it shall contain, and the documentation that shall accompany the return. Said form shall be identical to the real estate transfer tax return required to be filed pursuant to § 1409 of the New York Tax Law, except that the Treasurer shall adapt said form to reflect the provisions of this article which are inconsistent with, different from, or in addition to the provisions of Article 31 of the Tax Law. The real estate transfer tax returns required to be filed pursuant to this section are required to be preserved for three years and thereafter until such Treasurer or Recording Officer orders them to be destroyed.
- C. The Recording Officer shall not record an instrument effecting a conveyance unless the return required by this section has been filed and unless the tax imposed pursuant to this article shall have been paid as provided in this section.

§ 57-11. Liability for tax.

- A. The real estate transfer tax required hereunder shall be paid by the grantee. If the grantee has failed to pay the tax imposed pursuant to this article, or if the grantee is exempt from such tax, the grantor shall have the duty to pay the tax. Where the grantor has the duty to pay the tax because the grantee has failed to pay, such tax shall be the joint and several liability of the grantee and grantor.
- B. For the purpose of the proper administration of this article and to prevent evasion of the tax hereby authorized, it shall be presumed that all conveyances are taxable. Where the consideration includes property other than money, it shall be presumed that the consideration is the fair market value of the real property or interest therein. These presumptions shall prevail until the contrary is proven, and the burden of proving the contrary shall be on the person liable for payment of the tax.

§ 57-12. Exemptions from tax.

- A. Exemption for government agencies. The following entities shall be exempt from payment of the real estate transfer tax imposed by this article:
- (1) The State of New York or any of its agencies, instrumentalities, political subdivisions, or public corporations (including a public corporation created pursuant to agreement or compact with another state or Canada);
 - (2) The United Nations; and
 - (3) The United States of America and any of its agencies or instrumentalities.
- B. Exemption for certain conveyances. The real estate transfer tax imposed by this article shall not apply to any of the following conveyances:
- (1) Conveyances to the United Nations, the United States of America or the State of New York or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada).
 - (2) Conveyances which are or were used to secure a debt or other obligation.
 - (3) Conveyances which, without additional consideration, confirm, correct, modify, or supplement a prior conveyance.
 - (4) Conveyances of real property without consideration and otherwise than in connection with a sale, including conveyances conveying realty as bona fide gifts.
 - (5) Conveyances given in connection with a tax sale.
 - (6) Conveyances to effectuate a mere change of identity or form of ownership or organization where there is no change in beneficial ownership, other than conveyances to a cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings.
 - (7) Conveyances which consist of a deed of partition.
 - (8) Conveyances given pursuant to the Federal Bankruptcy Act.
 - (9) Conveyances of real property which consist of the execution of a contract to sell real property without the use or occupancy of such property or the granting of an option to purchase real property without the use or occupancy of such property.
 - (10) Conveyances of real property or a portion or portions of real property that are the subject of one or more of the following development restrictions:

- (a) An agricultural, conservation, scenic, or open space easement.
 - (b) Covenants or restrictions which prohibit the development where the property or portion of property being conveyed has had its development rights permanently removed.
 - (c) A purchase of development rights agreement where the property or portion of property being conveyed has had its development rights permanently removed.
 - (d) A transfer of development rights agreement where the property being conveyed has had its development rights removed.
 - (e) Real property subject to any locally adopted land preservation agreement.
- (11) Conveyances of real property where the property is viable agricultural land as defined in subdivision 7 of § 301 of the Agriculture and Markets Law and the entire property to be conveyed is to be made subject to one of the development restrictions set forth in the preceding Subsection B(6), provided that said development restriction precludes the conversion of the property to a nonagricultural use for at least eight years from the date of transfer, and said development restriction is evidenced by an easement, agreement, or other suitable instrument which is conveyed to the Town simultaneously with the conveyance of the real property.
- (12) Conveyances of real property for open space, parks, or historic preservation purposes to any not-for-profit tax-exempt corporation operated for conservation, environmental, or historic preservation purposes.

§ 57-13. Additional exemption.

There shall be allowed an exemption of an amount equal to the median sales price of residential real property within the County of Dutchess, as determined by the Office of Real Property Services pursuant to § 425 of the Real Property Tax Law, on the consideration of the conveyance of improved or unimproved real property or an interest therein.

§ 57-14. Credit for prior tax paid.

A grantee shall be allowed a credit against the tax due on a conveyance of real property to the extent that tax was paid by such grantee on a prior creation of a leasehold of all or a portion of the same real property or on the granting of an option or contract to purchase all or a portion of the same real property by such grantee. Such credit shall be computed by multiplying the tax paid on the creation of the leasehold or on the granting of the option or contract by a fraction, the numerator of which is the value of the consideration used to compute such tax paid which is not yet due to such

grantor on the date of the subsequent conveyance (and which such grantor will not be entitled to receive after such date) and the denominator of which is the total value of the consideration used to compute such tax paid.

§ 57-15. Cooperative housing corporation transfers.

A. Notwithstanding the definition of "controlling interest" contained in § 57-8 hereof or anything to the contrary found in the definition of "conveyance" contained in said section, the tax imposed pursuant to this article shall apply to the following:

- (1) The original conveyance of shares of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the cooperative corporation or cooperative plan sponsor.
- (2) The subsequent conveyance of such stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold by the owner thereof. With respect to any such subsequent conveyance where the property is an individual residential unit, the consideration for the interest conveyed shall exclude the value of any liens on certificates of stock or other evidences of an ownership interest in and a proprietary lease from a corporation or partnership formed for the purpose of cooperative ownership of residential interest in real estate remaining thereon at the time of conveyance. In determining the tax on a conveyance described in Subsection A(1) above, a credit shall be allowed for a proportionate part of the amount of any tax paid upon the conveyance to the cooperative housing corporation of the real property comprising the cooperative dwelling or dwellings to the extent that such conveyance effectuated a mere change of identity or form of ownership of such property and not a change in the beneficial ownership of such property. The amount of credit shall be determined by multiplying the amount of tax paid upon the conveyance to the cooperative housing corporation by a percentage representing the extent to which such conveyance effectuated a mere change of identity or form of ownership and not a change in the beneficial ownership of such property, and then multiplying the resulting product by a fraction, the numerator of which shall be the number of shares of stock conveyed in a transaction described in Subsection A(1) and the denominator of which shall be the total number of shares of stock of the cooperative housing corporation (including any stock held by the corporation). In no event, however, shall such credit reduce the tax on a conveyance described in Subsection A(1) below zero, nor shall any such credit be allowed for a tax paid more than 24 months prior to the date on which occurs the first in a series of conveyances of shares of stock in an offering of cooperative housing corporation shares described in Subsection A(1).

- B. Every cooperative housing corporation shall be required to file an information return with the County Treasurer by July 15 of each year covering the preceding period of January 1 through June 30 and by January 15 of each year covering the preceding period of July 1 through December 31. The return shall contain such information regarding the conveyance of shares of stock in the cooperative housing corporation as the Treasurer may deem necessary, including, but not limited to, the names, addresses, and employee identification numbers or social security numbers of the grantor and the grantee, the number of shares conveyed, the date of the conveyance, and the consideration paid for such conveyance.

§ 57-16. Designation of agent by County Treasurer.

The County Treasurer is authorized by law to designate the Recording Officer to act as his agent for the purpose of collecting the tax imposed by this article. The Treasurer shall provide for the manner in which such person may be designated as his agent subject to such terms and conditions as he shall prescribe. The real estate transfer tax shall be paid to such agent as provided in § 57-10 hereof.

§ 57-17. Liability of Recording Officer.

A Recording Officer shall not be liable for any inaccuracy in the amount of tax imposed pursuant to this article that he shall collect so long as he shall compute and collect such tax on the amount of consideration or the value of the interest conveyed as such amounts are provided to him by the person paying the tax.

§ 57-18. Refunds.

Whenever the Treasurer shall determine that any moneys received under the provisions of this article were paid in error, he may cause such money to be refunded pursuant to such rules and regulations as he may prescribe, provided that any application for such refund is filed with the Treasurer within two years from the date the erroneous payment was made.

§ 57-19. Deposit and disposition of revenue.

- A. All taxes, penalties, and interest imposed by the Town under the authority of this article, which are collected by the Treasurer or his agents, shall be deposited in a single trust fund for the Town and shall be kept in trust and separate and apart from all other monies in possession of the Treasurer. Moneys in such fund shall be deposited and secured in the manner provided by § 10 of the General Municipal Law. Pending expenditure from such fund, moneys therein may be invested in the manner provided in § 11 of the General Municipal Law. Any interest earned or capital gain realized on the moneys so deposited or invested shall accrue to and become part of such fund.

- B. The Treasurer shall retain such amount as he may determine to be necessary for refunds with respect to the tax imposed by the Town under the authority of this article, out of which the Treasurer shall pay any refunds of such taxes to those taxpayers entitled to a refund pursuant to the provisions of this article.
- C. The Treasurer, after reserving such funds, shall on or before the 12th day of each month, pay to the Town Supervisor the taxes, penalties, and interest imposed by the Town under the authority of this article, collected by the Treasurer pursuant to this article during the preceding calendar month. The amount so payable shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. However, any such certification may be based on such information as may be available to the Treasurer at the time such certification must be made under this section.
- D. Where the amount so paid over to the Town in any such distribution is more or less than the amount due to the Town, the amount of the overpayment or underpayment shall be certified to the Town Supervisor by the Treasurer, who shall not be held liable for any inaccuracy in such certification. The amount of the underpayment or overpayment shall be so certified to the Town Supervisor as soon after the discovery of the overpayment or underpayment as reasonably possible, and subsequent payments and distributions by the Treasurer to such Town shall be adjusted by subtracting the amount of any such overpayment from or by adding the amount of any such underpayment to such number of subsequent payments and distributions as the Treasurer and Town Supervisor shall consider reasonable in view of the underpayment or overpayment and all other facts and circumstances.
- E. All monies received from the Treasurer by the Town Supervisor shall be deposited in the Community Preservation Fund established pursuant to Article I of this chapter.

§ 57-20. Judicial review.

- A. Any final determination of the amount of any tax payable under this article shall be reviewable for error, illegality, or unconstitutionality, or any other reason whatsoever, by a proceeding under Article 78 of the Civil Practice Law and Rules if application therefor is made to the Supreme Court within four months after the giving of the notice of such final determination; provided, however, that any such proceeding under Article 78 of the Civil Practice Law and Rules shall not be instituted unless:
 - (1) The amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by this chapter, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount as a Justice of the

Supreme Court shall approve, to the effect that, if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding; or

- (2) At the option of the petitioner, such undertaking may be in a sum sufficient to cover the taxes, interest, and penalties stated in such determination, plus the costs and charges which may accrue against him in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest, or penalties as a condition precedent to the application.
- B. Where any tax imposed hereunder shall have been erroneously, illegally, or unconstitutionally assessed or collected, and application for the refund or revision thereof duly made to the Treasurer, and such Treasurer shall have made a determination denying such refund or revision, such determination shall be reviewable by a proceeding under Article 78 of the Civil Practice Law and Rules; provided, however, that:
- (1) Such proceeding is instituted within four months after the giving of the notice of such denial;
 - (2) A final determination of tax due was not previously made; and
 - (3) An undertaking is filed with the Treasurer in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding is dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding.

§ 57-21. Apportionment of consideration subject to tax for property located only partly within Town.

- A. Where real property is situated partly within and partly without the boundaries of the Town, the consideration subject to tax is such part of the total consideration as is attributable to the portion of such real property situated within the Town or to the interest in such portion. If the consideration attributable to the property located in the Town is set forth in the contract, such amount may be used to compute the tax due.
- B. If the contract does not set forth the amount of consideration attributable to the portion of real property or interest therein situated within the Town, the consideration shall be reasonably allocated between the portion of such property or interest therein situated within the Town and the portion of such property or interest therein situated without the Town. If the grantor and the grantee enter into a written agreement, signed by both the grantor and the grantee, which sets forth a reasonable allocation of consideration, that allocation of consideration may be used to compute the tax due. If the grantor and the grantee do not enter into such an agreement, or if the allocation of consideration set forth in such agreement is deemed unreasonable

by the Treasurer, the allocation of consideration must be computed by multiplying the amount of consideration by a fraction, the numerator of which is the fair market value of the real property or interest therein situated within the Town, and the denominator of which is the total fair market value of all the real property or interest therein being conveyed. Except in the case of a transfer or acquisition of a controlling interest where consideration means fair market value of the real property or interest therein, the tax shall be computed on the allocated portion of the actual consideration paid, even if that amount is greater or less than the fair market value as determined by appraisal.

- C. Where the methods provided under this section do not allocate the consideration in a fair and equitable manner, the Treasurer may require the grantor and grantee to allocate the consideration under such method as he prescribes, so long as the prescribed method results in a fair and equitable allocation.

§ 57-22. Determination of tax; petition to Town Supervisor.

- A. If a return required by this article is not filed, or if a return is incorrect or insufficient when filed, the amount of tax due shall be determined by the Treasurer from such records or information as may be obtainable, including the assessed valuation of the real property or interest therein and other appropriate factors. Notice of such determination shall be given to the person liable for the payment of the tax. Such determination shall finally and irrevocably fix the tax unless the person against whom it is assessed, within 90 days after the giving of notice of such determination, shall petition the Town Supervisor for a hearing, or unless the Treasurer, on the Treasurer's own motion, shall redetermine the same. The Town Supervisor may designate, in writing, a hearing officer to hear such an appeal, which hearing officer shall file a written report and recommendation with the Town Supervisor. In any case before the Town Supervisor under this article, the burden of proof shall be on the petitioner. After such hearing, the Town Supervisor shall give notice of the determination to the person against whom the tax is assessed and to the Treasurer. Such determination may be reviewed in accordance with the provisions of § 57-20 of this article. A proceeding for judicial review shall not be instituted unless:

- (1) The amount of any tax sought to be reviewed, with penalties and interest thereon, if any, shall be first deposited with the Treasurer and there shall be filed with the Treasurer an undertaking, issued by a surety company authorized to transact business in New York State and approved by the State Superintendent of Insurance as to solvency and responsibility, in such amount and with such sureties as a Justice of the Supreme Court shall approve, to the effect that if such proceeding shall be dismissed or the tax confirmed, the petitioner will pay all costs and charges which may accrue in the prosecution of the proceeding; or

- (2) At the option of the petitioner, such undertaking filed with the Treasurer may be in a sum sufficient to cover the taxes, penalties, and interest thereon stated in such decision, plus the costs and charges which may accrue against him in the prosecution of the proceeding; in which event, the petitioner shall not be required to deposit such taxes, penalties, and interest as a condition precedent to the commencement of the proceeding.
- B. A person liable for the tax imposed by this article (whether or not a determination assessing a tax pursuant to Subsection A hereof has been made) shall be entitled to have the tax due finally and irrevocably fixed prior to the ninety-day period referred to in Subsection A by filing with the Treasurer a signed statement consenting thereto, in writing and in such form as the Treasurer shall prescribe.
- C. The remedies provided by this section and § 57-20 of this article shall be the exclusive remedies available to any person for the review of tax liability imposed by this article.

§ 57-23. Proceedings to recover tax due.

- A. Whenever any person shall fail to pay any tax, penalty, or interest imposed by this article, the Town Attorney shall, upon the request of the Treasurer, bring or cause to be brought an action to enforce the payment of the same on behalf of the Town, in any court of the State of New York or of any other state or of the United States.
- B. As an additional and alternative remedy, the Treasurer may issue a warrant, directed to the Sheriff of Dutchess County, commanding him to levy upon and sell any real and personal property of a grantor or grantee liable for the tax which may be found within the county, for payment of the amount thereof, with any penalty and interest and the cost of executing the warrant, and to return such warrant to the Treasurer and to pay the Treasurer the money collected by virtue thereof within 60 days after the receipt of the warrant. The Sheriff shall, within five days after the receipt of the warrant, file with the Clerk a copy thereof, and thereupon such Clerk shall enter in the judgment docket the name of the person mentioned in the warrant and the amount of the tax, penalty, and interest for which the warrant is issued. Such lien shall not apply to personal property unless such warrant is filed with the Department of State. The Sheriff shall then proceed upon the warrant in the same manner and with like effect as that provided by law in respect to executions issued against property upon judgments of a court of record, and for services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner. In the discretion of the Treasurer, a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the county; and in the execution thereof, such officer or employee shall have all the powers conferred by law upon Sheriffs but shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty. Upon such filing of

a copy of a warrant, the Treasurer shall have the same remedies to enforce the amount due thereunder as if the County of Dutchess had recovered the judgment therefor.

§ 57-24. Interest and civil penalties.

- A. Any grantor or grantee failing to file a return or to pay any tax within the time required by this article shall be subject to a penalty of 10% of the amount of the tax due plus an interest penalty of 2% of such amount, for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due; such interest penalty shall not exceed 25% in the aggregate. If the Treasurer determines that such failure or delay was due to reasonable cause and not due to willful neglect, the Treasurer shall remit, abate or waive all of such penalty and interest penalty.
- B. If any amount of tax is not paid on or before the last date prescribed in § 57-10 hereof for payment, interest on such amount at the rate of 10% per month shall be paid for the period from such last date to the date paid.
- C. The penalties and interest provided for in this section shall be paid to the Treasurer and shall be determined, assessed, collected and distributed in the same manner as the tax imposed by this article, and any reference to tax in this article shall be deemed to include the penalties and interest imposed in this section.

§ 57-25. Confidentiality of transfer tax returns.

- A. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the Town, or any person engaged or retained on an independent contract basis, to divulge or make known in any manner the particulars set forth or disclosed in any return required under this article. However, nothing in this section shall prohibit the recording officer from making a notation on an instrument effecting a conveyance indicating the amount of tax paid. No recorded instrument effecting a conveyance shall be considered a return for the purposes of this section.
- B. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Town in any action or proceeding involving the collection of a tax due under this article to which the Town or an officer or employee of the Town is a party or a claimant, or on behalf of any party to any action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding; in any of which events the court may require the production of and may admit in evidence so much of said returns or of the facts shown thereby as are pertinent to the action or proceeding and no more.

- C. Nothing herein shall be construed to prohibit the delivery to a grantor or grantee of an instrument effecting a conveyance, or to the duly authorized representative of such grantor or grantee, of a certified copy of any return filed in connection with such instrument or to prohibit the publication of statistics so classified as to prevent the identification of particular returns or the items thereof or to prohibit the inspection by the legal representatives of the Town of the return of any taxpayer who shall bring action to set aside or review the tax based thereon.
- D. Any officer or employee of the Town who willfully violates the provisions of this section shall be dismissed from office and be incapable of holding any public office in the state for a period of five years thereafter.

ARTICLE III

Community Preservation Plan

**[Adopted 5-25-2011 by L.L. No. 2-2011; amended in its entirety
6-9-2016 by L.L. No. 4-2016]**

§ 57-26. Incorporation of Plan.

A copy of the Community Preservation Plan on file with the Town Clerk is attached hereto and incorporated as if fully set forth in this place.²

2. **Editor's Note: For the Community Preservation Plan, consult the Town Clerk or the Town website.**