

ORDINANCE NO. 7

SERIES 2013

AN ORDINANCE AMENDING THE TOWN OF CRESTED BUTTE'S LAND TRANSFER EXCISE TAX CONTAINED IN SECTION 4-4-10 ET SEQ. OF THE CRESTED BUTTE MUNICIPAL CODE IN ORDER TO MAKE FORECLOSURE SALES TRANSFERS AND TRANSFERS BY DEEDS IN LIEU OF FORECLOSURE SUBJECT TO THE TAX EXCEPT WHERE OTHERWISE EXEMPTED THEREFROM AND MAKING OTHER NON-TAX POLICY AMENDMENTS TO THE TAX

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and now validly existing as a body corporate and politic under and by virtue of the Constitution and the laws of the State of Colorado;

WHEREAS, the Crested Butte Municipal Code (the "**Code**") imposes a Land Transfer Excise Tax, codified at § 4-4-10 *et seq.* (the "**RETT**") on all transfers by deeds or other instruments of transfer by which lands or other interests in real property within Crested Butte are sold or otherwise transferred;

WHEREAS, the Code contains certain exemptions from the applicability of the RETT that, where the transferor or transferee of real property establishes with the Town that the transfer falls under one or more exemptions the subject transfer may be deemed exempt by the Town;

WHEREAS, the Town Council, by Ordinance No. 13, Series, 2012 ("**Ordinance No. 13**") exempted certain transfers from the applicability of the RETT in connection with transfers in lieu of foreclosure where certain requirements are satisfied;

WHEREAS, in its adoption of Ordinance No. 13, the Town Council found that transfers in lieu of foreclosure should be exempt from the RETT on account that such transfers were not unlike foreclosure sales and would not likely be used as an artifice to circumvent the intent and spirit of the RETT;

WHEREAS, since the adoption of Ordinance No. 13, the Town staff has learned of one or more transfers in lieu of foreclosure that indicate that certain transfers following foreclosures sales and those in lieu of foreclosure could be used as an artifice to circumvent the intent and spirit of the RETT;

WHEREAS, based on the Town staff's findings, the Town Council created a committee (the "**Task Force**") of two Town Council members and several members of the Town staff to study transfers following foreclosures sales and those in lieu of foreclosure and how they could be used as an artifice to circumvent the intent and spirit of the RETT;

WHEREAS, the Task Force has studied how other municipalities in Colorado with similar land transfer excise taxes, principally the City of Aspen, address the applicability of the land transfer excise tax to foreclosure sales and transfers in lieu of foreclosure;

WHEREAS, based on such study, the Task Force found that certain transfers following foreclosures sales and those in lieu of foreclosure could be used as an artifice to circumvent the intent and spirit of the RETT and, accordingly, has recommended to the Town Council that it amend the Code to make transfers following foreclosures sales and those in lieu of foreclosure taxable pursuant to the RETT; except that, where certain conditions are met, such transfers shall be deemed exempt from the tax;

WHEREAS, the Town Council finds that the Town's RETT is an important source of revenue to the Town and that transfers following foreclosures sales and those in lieu of foreclosure should be made taxable pursuant to the RETT without opportunity of a transferor or transferee to use transfers following foreclosures sales and those in lieu of foreclosure as an artifice to circumvent the intent and spirit of the RETT; except that, where certain conditions are met, such transfers shall be deemed exempt from the tax; and

WHEREAS, the Town Council has determined that the below amendments to the Code represent non-policy changes to the application of the RETT and are, therefore, in the best interest of the health, safety and welfare of the residents and visitors of Crested Butte.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. **Amending Section 4-4-30.** Section 4-4-30 of the Code is hereby amended by adding the following new defined term thereto:

“Financial institution means, for purposes of this Chapter, an insured bank, commercial bank or trust company or credit union.”

Section 2. **Amending Section 4-4-50.** Section 4-4-50 of the Code is hereby deleted in its entirety and replaced with the following new section which shall read as follows:

“Section 4-4-50. Exemptions.

The tax imposed under the authority of this Article shall not apply to:

(1) Any document wherein the United States or any agency or instrumentality thereof, the State, any county, city and county municipality, district or other political subdivision of this State, is either the grantor or grantee.

(2) Any document transferring title to real property in consequence of a gift of such property, where no consideration other than love and affection or charitable donation is evidenced by the terms of the document of transfer.

(3) Any transfer by document, decree or agreement partitioning, terminating or evidencing termination of a joint tenancy, tenancy in common or other co-ownership in real property; however, if additional consideration or value is paid in connection with such partition or termination, the tax shall apply and be based upon such additional consideration.

(4) Transfers pursuant to a decree of separation or divorce except where the transfer is made to a third party.

(5) Any transfer of title or change of interest in real property by reason of death, will or decree of distribution.

(6) Any transfer made pursuant to business organization, reorganization, or restructuring including but not limited to mergers or consolidations of corporations, or by a subsidiary to a parent corporation for no consideration other than cancellation or surrender of the subsidiary's stock or ownership interest. The transfer of at least seventeen percent (17%) of the stock in a corporation or seventeen percent (17%) of any ownership interest in a business entity whose assets include real property within the Town shall not be included in this exemption, and such transfer shall be subject to imposition of the excise tax imposed under Section 4-4-10 above.

(7) Any transfer to make effective any plan confirmed or ordered by a court of competent jurisdiction under the Bankruptcy Act or in an equity receivership proceeding.

(8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments; removing clouds of titles; or granting easements, rights-of-way or licenses.

(9) Any decree or order of a court of record quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding.

(10) Any transfer granting or conveying title to cemetery lots.

(11) Any lease of any real property, or assignment or transfer of any interest in any such lease, provided that the terms and conditions of such lease do not constitute a de facto conveyance of the subject property. In the later event the land transfer tax shall be based upon the capitalization at five percent (5%) of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, or at the election of the Town Manager, the tax shall be based upon the assessed value of the property covered by the lease.

(12) Any mineral transfer or mineral royalty transfer.

(13) Any transfer to secure a debt or other obligation, or release of real property which is security for a debt or other obligation.

(14) Any executory contract for the sale of real property, of less than three (3) years' duration, under which the purchaser is entitled to or does take possession thereof without acquiring title thereto, or any assignment or cancellation of any such contract.

(15) (a) Any transfer under execution, sale or foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee deed or treasurer's deed; or deed in lieu of foreclosure; provided that such transfer shall be exempt only (i) if the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer or upon which the proceeding is based, as applicable, or the grantee is a junior lienholder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution, (ii) such grantee is the original obligation holder or a financial institution; and (iii) to the extent of the obligation which is being canceled, in whole or in part, in exchange for the transfer or is being satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale.

(b) Notwithstanding paragraph (a) hereof, where the grantee is not the original obligation holder or a financial institution, and where the other requirements of paragraph (a) are otherwise met, such transfer may still qualify for an exemption from the tax pursuant this subsection (15); provided that, the transferee must, as market conditions allow, resell the property in order to satisfy the obligation within two (2) years of the transfer. If, however, the property is not sold within two (2) years of the transfer, or within any extension of such time beyond two (2) years as the Town Manager may allow for good cause shown, then the transfer shall not be considered exempt pursuant to this subsection (15) and shall be considered an artifice and taxable as provided for in this Chapter. Where the transfer is not otherwise exempt pursuant to paragraph (a) hereof, the Town Manager shall place a lien or other form of security on the subject property as approved by the Town Attorney equal to the amount of tax that may be levied on the transfer at the time thereof.

(c) A purchaser at an execution or foreclosure sale who holds no security interest or redemption rights in the property, and who acquires title to the property upon expiration of all redemption periods is required to pay the tax.

(d) For deeds in lieu foreclosure transfers, in order to qualify for an exemption from the tax pursuant to this subsection (15), the obligation that is being cancelled must be in default at the time of the transfer and no additional consideration shall be exchanged between the transferor and transferee in connection with such transfer. The transferor and transferee shall provide to the Town Manager an affidavit approved by the Town Attorney certifying the existence of the default at the time of the transfer and that no additional consideration has or will be exchanged in connection with the transfer.

(16) Any transfer that is made pursuant to a valid and legally enforceable contract entered into between the seller and purchaser prior to the effective date of the initial ordinance codified herein, and which transaction is completed on or before June 1, 1980."

Section 3. Section 1. Amending Appendix "O" of the Code. Appendix "O" of the Code is hereby deleted in its entirety and replaced with the following new Appendix "O"

attached hereto as Exhibit "A."

Section 4. Severability. If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

Section 5. Savings Clause. Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the effective date hereof.

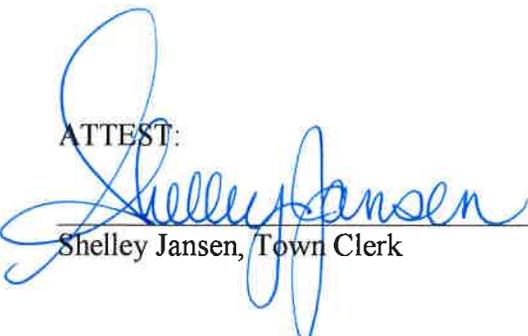
INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 18th DAY OF MARCH, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 1st DAY OF APRIL, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:


Shelley Jansen, Town Clerk

[SEAL]



EXHIBIT “A”

Appendix “O”

[attach new Appendix “O” here]

AFFIDAVIT

I Hereby Certify, Under penalty of Perjury, In Compliance with the Town of Crested Butte Municipal Code, that the Foregoing in True and Correct.

Name of Purchaser (Grantee): _____

Signature of Purchaser (Grantee): _____
Signature (if signed by an agent, certificate of agency is required)

Phone Number of Purchaser (Grantee): _____

Notarization of Purchaser(s)' Signatures Is Mandatory:

Subscribed and sworn to before me this ____ day of _____, 20__

My commission expires: _____
Notary Public

Address: _____

[END OF CERTIFICATE]

PLEASE PROVIDE INDIVIDUAL OWNERSHIP DETAILS AS NOTED BELOW:

In order to determine the propriety of Land Transfer Exemption requests, the Town of Crested Butte requires documentation of each of the individual owners and their respective %s of ownership, especially when the grantors or grantees are, for example, and not by way of limitation, corporations, LLCs, LLPs, PCs, partnerships, etc. Please indicate the individual full names of the grantors and grantees below and attach substantiating documentation such as, for example, corporate resolutions or partnership agreements which clearly support the individual ownerships and percentages listed below:

GRANTOR (s) (aka transferors, sellers, etc. - first & last names):

1:	_____	% of Ownership =	_____	%
2:	_____	% of Ownership =	_____	%
3:	_____	% of Ownership =	_____	%
4:	_____	% of Ownership =	_____	%

(if additional space is required, please attach a list of the grantors and %s of ownership) TOTAL=100%

GRANTEE(s) (aka transferees, buyers, etc. - first & last names):

1:	_____	% of Ownership =	_____	%
2:	_____	% of Ownership =	_____	%
3:	_____	% of Ownership =	_____	%
4:	_____	% of Ownership =	_____	%

(if additional space is required, please attach a list of the grantees and %s of ownership) TOTAL= 100%

FOR APPLICATION OF EXEMPTION PURSUANT SECTION 4-4-50(15), PLEASE PROVIDE THE INFORMATION AS NOTED BELOW:

In order to determine the propriety of Land Transfer Exemption requests pursuant to Section 4-4-50(15), the Town of Crested Butte requires sufficient supporting documentation (e.g., instrument of transfer, note, loan agreement, evidence of debt, deed of trust, security agreement, mortgage, installment land contract, etc.) as to whether (i) the grantee is the person holding the obligation or instrument which is being cancelled, in whole or part, in exchange for the transfer or upon which the proceeding is based, as applicable, or the grantee is a junior lienholder or exercising redemption rights pursuant to a lien that was recorded prior to commencement of the foreclosure or execution, (ii) such grantee is the original obligation holder or a financial institution (if the grantee is not the original obligation holder or a financial institution, the identity of the obligation holder), and (iii) the extent of the obligation which is being canceled, in whole or in part, in exchange for the transfer or is being satisfied at the execution or foreclosure sale and any obligations to prior lienholders paid from the sale.

As respects exemptions for transfers pursuant to Section 4-4-50(15), prior to any exemption being granted, the transferor and transferee shall execute an affidavit certifying that the obligation that is being cancelled must be in default at the time of the transfer and that no additional consideration shall be exchanged in connection with the transfer.

Satisfaction of the foregoing requirements are mandatory to the application of exemption pursuant to Section 4-4-50(15).

CERTIFICATE(S) OF EXEMPTION FROM TOWN OF CRESTED BUTTE:

I hereby certify that the within described transfer of real property is exempt from payments of the Town of Crested Butte’s Land Transfer Excise Tax.

Signature of Town Official: _____ Date: _____

Any person whose claim of exemption, duly applied for under the provisions of Section 4-4-50 of the Crested Butte Municipal Code, is denied by the Town Manager, may immediately appeal to the Crested Butte Town Council for a determination of such exemption and such appeal shall be considered by the Town Council in accordance with Section 4-4-60 of the Crested Butte Municipal Code. In the event of a determination by the Town Council favorable to the appellant, any tax previously deposited, or so much therefore as may be allowed by the Town Manager, shall be promptly refunded to the person paying or depositing the same.

For More Information, please contact:

Lois Rozman, Finance Director

P.O. Box 39 (mailing)

Address:

507 Maroon Avenue

Crested Butte, CO 81224

Phone: 970.349.5338 E-mail: loisr@crestedbutte-co.gov

Town of Crested Butte Municipal Code Web Page:

<http://www.colocode.com/crestedbutte.html>

Look in Chapter 4, Article 4

INSTRUCTIONS:

EXEMPTIONS FROM THE TOWN OF CRESTED BUTTE’S LAND TRANSFER EXCISE TAX:

In general, the basic substantiation required for a Crested Butte Land Transfer Excise Tax exemption will be detailed legal documents as noted below each section of the Crested Butte Municipal Code provided below.

COMMON EXEMPTION REQUESTS:

In the case of a gift or a **“no change of individual %s of ownership”** and/or **“no consideration”** transaction, one or more of the following types of documents may be required:

- 1) statement on the deed or instrument of transfer itself stating that no consideration in excess of \$500 is being exchanged. (See Exemption (2) below.)
- 2) Legal documents providing that there has been no change in ownership through the detailed delineation of individual owners and the %s of ownership which each owner has not changed. Documents such as, for example, and not by way of limitation, partnership and operating agreements for all limited liability companies, limited liability partnerships or similar types of ownership organizations may be required to provide proof of exemption. In the case of corporations, a copy of the corporate resolution stating the individual owners and the %s of the outstanding stock of the corporation held may be required. In the event any of the owners indicated in any of these documents are other than individual’s names, the Town will require the same type of documentation for such organizations until the actual individual owners’ names and %s of ownership are determined. (See Exemption “Other” below.)

The following has been excerpted (but shall not replace) from the Crested Butte Municipal Code, Section 4-4-50. After each number/subsection, the types of acceptable documentation required are indicated:

(1) Any document wherein the **United States or any agency or instrumentality thereof, the State, any county, city and county, municipality, district or other political subdivision of this State, is either the grantor or grantee;**

- in the event the governmental status of a grantor or grantee is unknown, a legal document providing that the grantor or grantee is in fact a governmental entity, such as a certified copy of the approved and enacted referendum, etc., which created the governmental entity.

(2) Any document transferring title to real property in consequence of a **gift** of such property, where **no consideration** other than love and affection or **charitable donation** is evidenced by the terms of the document of transfer;

- evidentiary documentary proof of the gift or charitable status of the exchange of property such as a statement on the deed or instrument of transfer itself stating that no consideration other than love and affection is being exchanged or that no consideration in excess of \$500 is being exchanged.

(3) Any document, decree or agreement partitioning, terminating or evidencing **termination of a joint tenancy** in real property except where additional consideration of value is paid in connection with such partition or termination;

-evidentiary documentary proof of the partition or termination of such joint tenancy for no compensation such as a statement on the deed or instrument itself that states that the purpose of the deed or instrument of transfer is to partition or terminate the joint tenancy.

(4) Transfers pursuant to a decree of separation or divorce except where the transfer is made to a third party:
-divorce decree or decree of separation.

(5) Any transfer of title or change of interest in real property by reason of **death, will or decree of distribution;**

-copy of the death certificate and will stating that the grantee is the recipient of such property.

(6) Any transfer made pursuant to business organization, reorganization or restructuring including but not limited to mergers or consolidations of corporations, or by subsidiary to a parent corporation **for no consideration** other than cancellation or surrender of the subsidiary's stock or ownership interest. The transfer of at least 17% of the stock in a corporation or 17% of any ownership interest in a business entity whose assets include real property within the Town shall not be included in this exemption, and such transfer shall be subject to imposition of the Town's Land Transfer Excise Tax;

- a clear notarized, sworn to narrative description of the subject transaction with copies of the substantiating legal documents clearly indicating that there was in fact no consideration exchanged in the corporate transaction other than the surrender of the subsidiary's stock or ownership interest.

(7) Any transfer to make effective any plan confirmed or order by a court of competent jurisdiction under the Federal Bankruptcy Act or in an equity receivership proceeding;

-a copy of the court approved plan and order.

(8) Any transfer made and delivered without consideration for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded; making minor boundary adjustments, removing clouds of titles; or granting easements, rights-of-way or licenses;

- such deeds or instruments are normally headed at the top with the words **“Correction Deed”**. Correction Deeds should evidence that no change in principals or %s of ownership of principals to the transaction has occurred.

(9) **Any decree or order of a court of record** quieting, determining or resting title, including a final order awarding title pursuant to a condemnation proceeding;

- a copy of the court decree or order.

(10) Any transfer granting or conveying title to **cemetery lots**;

- a clear property description on the deed or other instrument indicating that the same is in fact for a cemetery lot.

(11) Any **lease of any real property**, or assignment or transfer of any interest in any such lease, provided that the terms and conditions of such lease do not constitute a de facto conveyance of the subject property. In the latter event the Land Transfer Excise Tax shall be based upon the capitalization at five (5) percent of the average annual rental over the entire term of the lease, including any renewal term, plus the actual consideration, other than rent, paid or to be paid. When the average annual rental cannot be determined, or at the election of the Town Manager, the Land Transfer Excise Tax shall be based upon the assessed value of the property covered by the lease;

- a copy of the subject lease and a clear indication thru notarized and sworn to statement or other legal document indicting that the lease does not constitute a de facto conveyance or transfer of the property.

(12) Any **mineral transfer or mineral royalty transfer**;

- a clear indication on the deed or instrument of transfer itself that the same is in fact a “mineral” or “royalty” transfer.

(13) Any **transfer to secure a debt** or other obligation, or transfer **or release of property which is security for a debt** or other obligation;

- a copy of the actual debt obligations (promissory notes, loan agreement, deeds of trust, security instruments, etc.) stating that the subject property is the specified collateral for the debt obligation.

- a copy of the signed legal document which releases the security (the subject property) for a debt.

(14) Any **executory contract for the sale of real property**, of less than three (3) years’ duration, under which the purchaser is entitled to or does take possession thereof **without acquiring title thereto**, or any assignment or cancellation of any such contract;

- copies of adequate legal documents to support the allegation that the purchaser is in fact entitled to the subject property without acquiring title.

(15) Any transfer under execution sale or **foreclosure sale** under execution, sale or foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff’s deed; public trustee deed or treasurer’s deed; or deed in lieu of foreclosure;

- copies of the notices of the foreclosure sales, sheriff’s or treasurer’s deed, clearly referencing the subject property.

-copies of instrument of transfer, note, loan agreement, evidence of debt, deed of trust, security agreement, mortgage, installment land contract, etc.

It is possible that “Other” reasons not specifically delineated in the Town of Crested Butte Municipal Code may exist:

“Other” may include transfers between trusts and their owners or their beneficiaries and other estate planning. In all cases, the Town of Crested Butte requires a copy of the trust agreement(s) clearly delineating the trust relationships and demonstrating that no consideration was exchanged in such transactions, unless the language in the deed or instrument of transfer itself states that there is no other consideration other than love and affection.

Legal documents providing that there has been no change in ownership through the detailed delineation of individual owners and the %s of ownership which each owner holds, both before and after the real estate transaction, in order to substantiate that the %s of ownership retained by each owner has not changed. This would include copies of partnership and operating agreements for all limited liability companies, limited liability partnerships, or similar types of ownership organizations. In the case of corporations, a copy of the corporate resolution stating the individual owners and the %s of the outstanding stock of the corporation held. In the event any of the owners indicated in any of these documents are other than individual’s names, the Town will require the same type of documentation for such organizations until the actual individual owners’ names and %s of ownership are determined.

IRC Section 1031 Exchanges of Property:

In an Internal Revenue Code Section 1031 exchange of properties, any properties so exchanged are fully subject to the Town’s Land Transfer Excise Tax. In the event that a “straw man” (an intermediary person or entity through which a transaction is made for income tax deferral purposes) is used in the transaction, the purchase by the “straw man” in order to set up the transaction would normally be exempted from the Town’s Land Transfer Excise Tax and the subsequent exchange of properties would both be subject to the Town’s Land Transfer Excise Tax (assuming both properties are located in Crested Butte).

In the event that the transfer for the “straw man” does not take place on the same day as the final exchange of parties, the “straw man’s” purchase would be subject to payment of the Town’s Land Transfer Excise Tax and, when the exchange actually takes place (assuming it takes place within six (6) months time from the first transaction), the transfer from the “straw man” at that time would be exempted because the “straw man” has already paid the Town the Land Transfer Excise Tax on the first transaction when he acquired the property. If the final exchange does not take place within said six (6) months of the first transaction, the “straw man” exemption no longer applies, it being assumed that the “straw man” actually acquired title for this own use and is in fact required to pay the Town’s land Transfer Excise Tax.

Similarities between Corporations and LLCs, etc.:

Deedless property sales may result in the Town’s Land Transfer Excise Tax being due and owing. In the case of LLCs and similar types of limited liability business organizations, the following applies: acquiring any interest in a limited liability business organization which owns property in Crested Butte will require the payment of the Town’s Land Transfer Excise Tax, whether or not there is an actual deed or similar instrument of transfer present and whether or not there is a transfer of the majority ownership.

Trusts and Financial Planning:

These are some of the most common property transfer transactions in Crested Butte. If the language “for no other consideration other than love and affection” is used on the deed or other instrument of transfer itself, it is automatically exempt from the Town’s Land Transfer Excise Tax with no further documentation required. Otherwise, the Town requires copies of the trust documents/agreements, etc., to demonstrate that no consideration has been exchanged.