

December 19, 2019

## AVON TOWN COUNCIL ADOPTS INCREASED PRIMARY RESIDENCE RETT EXEMPTION

Dear Vail Valley Real Estate Professionals:

The Town of Avon (“**Town**”) has imposed a 2% real estate transfer tax (“**RETT**”) since 1987 on all real estate transactions within Avon (subject to certain exemptions). The Avon Town Council (“**Council**”) recently amended the Real Estate Transfer Tax regulations to increase the RETT exemption for certain conveyances to a “Primary Residence” purchasers. This letter is intended to provide you an update and description of these recent amendments as well as various policies adopted at the staff level to implement these changes.

**Existing Primary Residence Exemptions:** As noted above, several exemptions provide partial or full relief from the imposition of the RETT. The most common exemption, the “Primary Residence RETT Exemption,” was adopted by Council in 2002. This exemption provides purchasers a one-time exemption of the first \$160,000 of consideration paid from the RETT for the purchaser’s first purchase of a primary residence in Avon, Avon Municipal Code (“**AMC**”) Section 3.12.060(17). For example, on the purchase of a \$660,000 home, only \$500,000 would be subject to the RETT due at closing, and the purchaser would owe \$10,000 in RETT rather than \$13,200. The maximum RETT exemption under this Section is \$3,200.

In 2007, Council added a second Primary Residence RETT exemption of \$160,000 for the subsequent purchase of a primary residence by purchasers with the added condition that the purchaser must meet the definition of an “*Eagle County Employee*,” AMC Section 3.12.060(18). This addition to the Primary Residence RETT exemption was intended to support working full-time residents who currently owned a primary residence in Avon but desired to purchase a different residence in Avon.

Both exemptions require the purchaser to use the property as a primary residence for at least one (1) year. The purchaser must execute a promissory note in the amount of the tax plus interest. The promissory note terms state that such tax and interest are due in the event the purchaser fails to occupy the property as their primary residence for the first year after closing. The promissory note is secured by a lien in favor of the Town. With respect to both exemptions, the purchaser must sign an affidavit that the property is being purchased for use as a primary residence and not for investment or resale. The exemption applies only to the portion of the transfer tax actually paid by the buyer and will not reduce any portion of the transfer tax that the seller agrees to pay in the transaction.

**New Primary Residence RETT Exemption:** On November 12, 2019, Council adopted Ordinance No. 19-05, which provides a third Primary Residence RETT exemption. Under this third exemption, purchasers may apply for an exemption of the first \$240,000 of consideration paid, which will typically provide \$4,800 in RETT relief. This exemption is available **ONLY IF** the following conditions are met: **(1)** the purchase price of the residence does not exceed \$700,000; **(2)** the purchaser is an Eagle County Employee; and, **(3)** the residence is used and occupied by the buyer as a primary residence for three (3) years.

In addition to these general requirements, the purchaser must fulfill several other administrative requirements prior the exemption being granted. The Purchaser must file an application with the Finance

Director with written verification, in the form of an executed closing statement or other written document, that (1) the purchase price does not exceed \$700,000; and (2) the amount of the RETT actually paid by buyer. The Purchaser must also execute an affidavit that the property is being purchased for use as a primary residence and not for investment or resale. The purchaser must also provide a promissory note in the amount of the tax, plus interest, providing such tax and interest are due in the event the purchaser fails to occupy the property within thirty (30) days of closing (or ninety (90) days if the appropriate waiver is filed) as their primary residence for the first three (3) years after closing, which note will be secured by a lien in favor of the Town.

**SUMMARY OF PRIMARY RESIDENCE RETT EXEMPTIONS:**

<b>Exemptions</b>	<b>Section (17)</b>	<b>Section (18)</b>	<b>Section (19)</b>
<b>Amount</b>	\$160,000	\$160,000	\$240,000
<b>Home Value Cap</b>	None	None	\$700,000
<b>Eagle County Employee</b>	N/A	Yes	Yes
<b>Affidavit of Primary Residence</b>	Yes	Yes	Yes
<b>Promissory Note</b>	1 year	1 year	3 years
<b>Lien</b>	Yes	Yes	Yes

**Definitions:** In addition to making a third exemption available to purchasers, the Council also amended the definitions of “Primary Residence” and “Eagle County Employee.” The change in the Primary Residence definition impacts all three Primary Residence Exemptions while the change to the “Eagle County Resident Exemption” applies to the subsequent purchase exemption as well as the third \$240,000 exemption.

***Primary Residence***

The amendments to the definition of “Primary Residence” primarily provides any purchaser who receives a Primary Residence Exemption may short-term rent portions of the residence provided that such person continues to occupy and use the residence as a primary residence. This assumes the property has been zoned for short-term rental of the property. In addition, primary residence status may be maintained if unforeseen circumstances arise that requires the buyer occupant to temporarily leave the residence for a period not to exceed nine (9) months with the intent to return, and the buyer occupant leases the residence to an Eagle County employee(s), and the buyer occupant receives written approval from the Town Manager. Finally, the recent amendments provides the Town Manager with the discretion to determine whether a purchaser meets the “Primary Residence” requirements set forth in the AMC.

***Eagle County Employee***

The amendments to the definition of “Eagle County Employee” acknowledges certain realities of the changing nature of the global economy. An “Eagle County Employee” has generally meant an employee working in Eagle County who works an average of at least thirty (30) hours per week on an annual basis or earns seventy-five percent (75%) of his or her income and earnings by working in Eagle County; or a retired individual, sixty (60) years or older, who has worked a minimum of five (5) years in Eagle County for an average of at least thirty (30) hours per week on an annual basis. An “Eagle County Employee” now also

includes 1) a person who derives income from self-employment whose business is situated in Eagle County; 2) a person who works for an employer outside Eagle County if that person can demonstrate the residence for which the exemption is sought is the primary residence for that person.

**Increased Benefit to Primary Resident Purchasers:** In amending the AMC, Council intended to increase the number of people who could take advantage of the Primary Residence Exemption as well as increase the dollar amount of the exemption available to the working locals within our community.

As for real estate professionals in the Valley, there is now another Primary Resident RETT exemption in Avon available to your clients. Specifically, with respect to the \$240,000 exemption, it is important to remember the purchaser is subject to all the rules that have already been in place with respect to the Primary Residence Exemption, plus:

- Exemption goes up to \$240,000, and can only be used if the other exemptions are not being utilized by the purchaser;
- Exemption only applies to purchase up to \$700,000;
- Purchaser must meet the definition of an Eagle County Employee;
- Property must be occupied as primary residence for three (3) years or until sold by the purchaser;
- Purchaser must provide closing statement evidencing the purchase price and amount of RETT paid by purchaser; and,
- Promissory note and lien will not be released for three (3) years (or until the property is sold, if sooner).

**Title Companies:** The Town requests title companies to hold the amount of the Primary Residence Exemption in escrow until the Town provides written verification to the purchaser the exemption has been granted. Such amounts should be released once the written confirmation from the Town has been provided to you.

The Town recognizes the RETT can be a source of confusion for purchasers, sellers, brokers, attorneys and title companies. Form and instructions related to the RETT and exemptions are available on-line at [www.avon.org/realestatetransfertax](http://www.avon.org/realestatetransfertax). If you have any questions or concerns regarding RETT applicable to transfers of real property within the Town of Avon please contact Carly Elena Fackler at (970) 748-4069 or [cfackler@avon.org](mailto:cfackler@avon.org).  
Sincerely,

*Carly Elena Fackler*

Carly Elena Fackler  
Town of Avon  
Accountant