

FLORIDA REAL ESTATE LIBRARY

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A. GENERAL INFORMATION ON PROPERTY TRANSFERS

Ownership of different types of property is proven in various ways. For example, ownership of an automobile may be determined by a title issued by the Department of Motor Vehicles. However, ownership of real estate (sometimes called real property) is determined by a legal document called a deed. To demonstrate your ownership of a piece of real estate you must produce a deed that describes the real estate and shows that ownership has been granted to you by the prior owner. To protect your interest and prove your ownership, the deed to you should be recorded in the public records in the county in which the real estate is located. Once this is done, the actual deed itself becomes less important. The clerk of each recorder's office maintains a record of all such deeds in their computers and often on microfiche or in some other format that is available for the public to review.

To transfer your ownership in real estate to another person, you must give the new owner a new deed to the real estate that identifies the property by specific legal description, shows the name of the new owner and formally transfers or "conveys" your interest in the property. The new owner should record their deed in the appropriate county recording office to establish the priority of their ownership claim. As you can see, as the property changes hands from owner to owner the deeds recorded in the recording office forms what some people in the real estate industry call the "chain of title." Through the public records system, you could theoretically search your U.S. property ownership "chain" all the way back to its original grant from the King of England!

B. OTHER CONSIDERATIONS IN TRANSFERRING PROPERTY

Transferring property to another can also trigger a variety of tax consequences. Income tax, gift tax and estate tax ramifications may arise but are well beyond the scope of this discussion. You should consult a tax advisor (accountant or tax attorney) to discuss these tax considerations if you have questions. Transferring real estate may also trigger a state tax of some sort. These taxes are commonly referred to as transfer taxes and in Florida are known as documentary stamp taxes. Specific forms must be filed with the deed to show payment of these taxes. In Florida, the Department of Revenue requires a Form DR-219 to be filed with each deed. This form provides information on the transfer and shows the amount of documentary stamp tax paid at the time the deed was recorded. Please see the section on Transfer Taxes for details on this tax.

Finally, the recording of a deed will also require that an administrative fee be paid to the county recorder's office. These recording fees usually take the form of a per page charge. In Florida, the fee is calculated based on a certain charge per page times the number of pages you are requesting the clerk to record. Other miscellaneous fees such as indexing charges for cases of more than two names on the deed may also be imposed. Each county recorder's office has some freedom in imposing incidental costs. Please see the section on Recording/Filing Information for details.

C. SUMMARY OF STEPS IN TRANSFERRING PROPERTY

To summarize our discussion above, the typical steps in transferring real estate to another are as follows:

1. The deed and any transfer form required by the Florida Department of Revenue are prepared in the form required by state law. State law will impose many specific requirements for form and content including the required page size for the deed, the location on the page for any blank spaces, the legends required to be printed on the document, the identity of the preparer and other items. Each of these requirements must be satisfied in order for the deed to be valid and acceptable for recording.
2. The current owner signs the documents in the presence of two witnesses and a notary public. Again, state law determines the required formalities for signing.
3. The original signed documents are presented to the clerk in the proper recorder's office together with payment for recording fees and any transfer tax that may be imposed.
4. The Clerk of the recorder's office records the documents in the official public records and sends them back to the new owner.

D. TWO TYPES OF DEEDS IN FLORIDA

There are several different types of deeds used in Florida to transfer an interest in real estate to another. We will discuss two most common ones below:

- **Quitclaim Deed.** A Quitclaim deed is a deed that simply transfers to the new owner (called the "Grantee") *whatever* interest in the property may be held by the person signing the deed. The signer of the deed (called the "Grantor") makes NO warranties or guarantees about the quality of Grantor's interest in the property, whether or not there are any liens against the property or whether anyone else may claim any interest in the property.
- **Warranty Deed.** A Warranty Deed, sometimes called a General Warranty Deed, is also a deed that transfers all rights of the Grantor to the Grantee, but the Grantor additionally makes certain warranties or promises to the Grantee. These promises include the Grantor's assurance that Grantor has the rights in the property Grantor purports to transfer to Grantee, that Grantor has the right to convey the property, that the property is free from liens or claims of third parties, that Grantor is entitled to be in possession of the property and that Grantor will compensate Grantee for any damages sustained as a result of any claims against the property by third parties. A warranty deed is most commonly used in sales between unrelated parties.

E. TYPES OF PROPERTY OWNERSHIP IN FLORIDA

A state's property laws may be based on the concept of common law or upon community property principles. Florida is known as a common law state and property rights in Florida are determined on that basis. (California, Wisconsin, and Texas are three of the most commonly known of the nine community property states in the U.S.) The following types of property ownership are found in Florida:

- **Sole ownership.** Sole ownership means that there is only one owner of the property. That owner may be an individual, corporation, partnership, trust or other entity.
- **Joint tenants with right of survivorship.** When property is held by more than one individual, it may be held by the parties as "joint tenants with right of survivorship" or as "tenants in common". Although the form of ownership may have other legal implications, it is most often associated with the question of "who owns the property if one owner dies?". If the property is held as joint tenants with right of survivorship and one of the owners dies, state property laws say the surviving owners (or "joint tenants") will own the entire property. The deceased owner's property interest is transferred to the others automatically and without the need to "probate" the deceased owner's share. ("Probate" is the court process typically required to administer and distribute someone's property after their death in accordance with their will.) In other words, property held as joint tenants with right of survivorship passes to the other owners at an owner's death without regard to what the deceased owner's will may say.

When one owner transfers his or her interest in property held as joint tenants with right of survivorship to some other person or entity without the participation of the other owner, the joint ownership is broken and property ownership converts by law into tenants in common property.

- **Tenants in Common.** When property is held by more than one individual, the parties' ownership rights are presumed to be as equal "tenants in common" unless a different intent is shown by the deed (for example, the deed may say the property is owned as joint tenants with right of survivorship). As a tenant in common your share of the property does not automatically pass to the other owners at your death. Your ownership interest will pass according to your wishes as you may have described them in your will or trust agreement. Absent a will or trust, the property will pass according to state intestacy laws.
- **Tenancy by the Entireties.** Only a married couple may hold property as "tenants by the entireties". Ownership of property as "tenants by the entireties" has many legal implications. This type of ownership has a bearing on whether or not a creditor can force the property to be sold to satisfy a claim of one or both spouses. It also bears on what happens to the property if one of the spouses should die. An owner's property rights versus the claims of creditors is beyond the scope of this website. If you are interested or concerned about this issue, you are strongly advised to seek the guidance of a knowledgeable attorney. As to what happens to the property upon the death of a spouse, tenancy by the entireties property passes to the surviving spouse/owner automatically and without probate, just as in the case of property held as joint tenants with right of survivorship. Tenancy by the Entireties is not available in all states.

RECORDING & FILING INFORMATION IN FLORIDA

The Clerk of the Circuit Court of the county in which the property is located is the proper place to record a deed for real property in Florida.

Recording Costs

The Clerk's office charges a fee for the various services they perform, including a charge for recording, indexing and/or providing copies of deeds. While some counties may impose higher charges for recording documents, the following fees are the state-required minimums and are typical of most counties:

First page or fraction of a page to be recorded:	\$6.00
Each additional page to be recorded:	\$4.50
Additional indexing fee for deeds containing more than four (4) names, <i>per additional name</i> *:	\$1.00
Copy of current deed (per page)	\$1.00

- * Each grantee name is counted separately and each grantor name is counted separately, even if one or more of the names is both a grantor and a grantee. For example, if you were presenting a 3 page deed for recording and the deed was **from** a husband and wife **to** the husband and wife as trustees of a named trust, the total recording fee would be \$16.00 (\$6.00 for the first page plus \$9.00 for pages two and three plus an additional \$1.00 for the indexing of the fifth name, the named trust, appearing on the deed).

UNIQUE COUNTY RECORDING CHARGES

<u>County</u>	<u>Fee</u>
Palm Beach County	Charges extra for legal descriptions. Charge is \$0.60 for 1 st legal description, \$0.60 for 2 nd additional legal description and \$0.20 for each additional legal description.

Real Estate Transfer Taxes in Florida

- A. General**
- B. Calculation of Tax**
- C. Unique County Tax Charges**

A. GENERAL

In Florida, a tax is imposed on most transfers of real estate. It is known as the documentary stamp tax. Florida Statutes Section 201.01 states that “The documentary stamp taxes required under this chapter shall be affixed to and placed on all recordable instruments requiring documentary stamps according to law, prior to recordation.” The Florida Department of Revenue is the agency responsible for enforcing the payment and collection of the documentary stamp tax. They collect information on the transfers and tax paid on Form DR-219. The Clerk of the Circuit Court recording the document is authorized to accept payment of the tax and will indicate payment on the face of the deed. So, before a deed will be accepted for recording, a completed Form DR-219 and full payment of the documentary stamp tax must be presented to the Clerk.

B. CALCULATION OF THE TAX

Unless a transfer is exempted, Florida law provides that “the tax on deeds, instruments, documents or writings whereby any lands, tenements or other realty or any interest therein is transferred or conveyed is 70 cents on each \$100 or fractional part thereof of the consideration paid”. In plain English, this means that the documentary stamp tax is calculated in dollars to be 0.007 times the value of anything received in exchange for the transfer, with the value being rounded up to the next highest one hundred dollars. For example, if you deeded a piece of property to someone in exchange for payment of \$9,970, the documentary stamp tax due would be \$70.00 (10,000 x 0.007). This tax rate is the same for all Florida counties except Miami-Dade. (See unique Miami-Dade County charges below)

For purposes of the documentary stamp tax, “consideration” includes any money paid, the amount of any debt discharged by the transfer, the amount of any outstanding mortgage on the property transferred (whether or not the indebtedness is assumed by the transferee), and any other “property” received in exchange for the transfer. “Property” is very broadly defined and includes anything that has a value or which goes to make up wealth or estate. Where someone gives property other than money in exchange for the transfer, the value of the property received is presumed to be equal to the fair market value of the property being transferred. For example, if you transfer property to a corporation in exchange for stock, the consideration received (the stock) is presumed to have a value equal to the fair market value of the property being transferred and the documentary stamp tax is based upon that value.

C. UNIQUE COUNTY DOCUMENTARY TAX CHARGES (STATE SURTAX)

County

Documentary Stamp Taxes

Miami-Dade County

\$0.60 per \$100 (rounded up) of consideration on a single family residential property transfer

\$0.60 per \$100 (rounded up) of consideration on a non-single family residential property transfer PLUS a surtax of \$0.45 per \$100 of consideration