

By Senator Lawson

6-00832-09

20091510\_\_

1                   A bill to be entitled  
 2           An act relating to the excise tax on documents;  
 3           amending s. 201.02, F.S.; permitting an election to  
 4           forego the payment of the tax on certain deeds,  
 5           instruments, and documents for transfers of real  
 6           property which change the form of ownership of real  
 7           property without effecting a change in the beneficial  
 8           ownership interest; requiring the election to be made  
 9           on forms issued by the Department of Revenue and  
 10          recorded in the official records; providing an  
 11          effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

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 15           Section 1. Section 201.02, Florida Statutes, is amended to  
 16           read:

17           201.02 Tax on deeds, and other instruments, or documents  
 18           relating to real property or interests in real property.—

19           (1) (a) On deeds, instruments, or documents in which  
 20           ~~writings whereby~~ any lands, tenements, or other real property,  
 21           or any interest therein, is shall be granted, assigned,  
 22           transferred, or otherwise conveyed to, or vested in, the  
 23           purchaser or any other person by his or her direction, the tax  
 24           on each \$100 of the consideration therefor ~~the tax~~ shall be 70  
 25           cents except as otherwise provided in this subsection. When the  
 26           full amount of the consideration for the execution, assignment,  
 27           transfer, or conveyance is not shown in the face of such deed,  
 28           instrument, document, or writing, the tax shall be at the rate  
 29           of 70 cents for each \$100, or fractional part thereof, of the

6-00832-09

20091510\_\_

30 consideration therefor except as otherwise provided in this  
31 subsection. For purposes of this section, consideration  
32 includes, but is not limited to, the money paid or agreed to be  
33 paid; the discharge of an obligation; ~~and~~ the amount of any  
34 mortgage, purchase money mortgage lien, or other encumbrance,  
35 whether or not the underlying indebtedness is assumed; and any  
36 increase in the value of any ownership interest in a grantee  
37 entity or other entity. If the consideration paid or given in  
38 exchange for real property or any interest therein includes  
39 property other than money, it is presumed that a purchaser  
40 exists and that the consideration is equal to the fair market  
41 value of the real property or interest therein.

42 (b)1. The parties to a grant, assignment, transfer, or  
43 conveyance of an interest in real property may elect to forego  
44 payment of the tax due under paragraph (a) if:

45 a. The grant, assignment, transfer, or conveyance results  
46 in a change in the form of ownership without effecting a change  
47 in a beneficial ownership interest; and

48 b. The only consideration given is an increase in the value  
49 of any ownership interest in the grantee entity or any other  
50 entity.

51 2. If the election is made under this paragraph, the tax  
52 under paragraph (a) shall be due on the full market value of the  
53 real property upon the next change in an ownership interest in  
54 the real property. However, the tax is not due upon a change in  
55 an ownership interest which returns the identical interest in  
56 the real property to the original grantor or grantors.

57 3. The election to forego payment of the tax must be made  
58 on or before the date of the grant, assignment, transfer, or

6-00832-09

20091510\_\_

59 conveyance on a form issued by the department. The form must be  
60 attached to and recorded with the deed, instrument, or document.

61 (2) The tax imposed by subsection (1) shall also be payable  
62 upon documents by which the right is granted to a tenant-  
63 stockholder to occupy an apartment in a building owned by a  
64 cooperative apartment corporation or in a dwelling on real  
65 property owned by any other form of cooperative association as  
66 defined in s. 719.103.

67 (3) The tax imposed by subsection (2) shall be paid by the  
68 purchaser, and the document recorded in the office of the clerk  
69 of the circuit court as evidence of ownership.

70 (4) The tax imposed by subsection (1) shall also be payable  
71 upon documents which convey or transfer, pursuant to s. 689.071,  
72 any beneficial interest in lands, tenements, or other real  
73 property, or any interest therein, even though such interest may  
74 be designated as personal property, notwithstanding the  
75 provisions of s. 689.071(6). The tax shall be paid upon  
76 execution of any such document.

77 (5) All conveyances of real property to a partner from a  
78 partnership which property was conveyed to the partnership after  
79 July 1, 1986, are taxable if:

80 (a) The partner receiving the real property from the  
81 partnership is a partner other than the partner who conveyed the  
82 real property to the partnership; or

83 (b) The partner receiving the real property from the  
84 partnership is the partner who conveyed the real property to the  
85 partnership and there is a mortgage debt or other debt secured  
86 by such real property for which the partner was not personally  
87 liable prior to conveying the real property to the partnership.

6-00832-09

20091510\_\_

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89 For purposes of this subsection, the value of the consideration  
90 paid for the conveyance of the real property to the partner from  
91 the partnership includes, but is not limited to, the amount of  
92 any outstanding mortgage debt or other debt which the partner  
93 pays or agrees to pay in exchange for the real property,  
94 regardless of whether the partner was personally liable for the  
95 debts of the partnership prior to the conveyance to the partner  
96 from the partnership.

97 (6) Taxes imposed by this section shall not apply to any  
98 assignment, transfer, or other disposition, or any document,  
99 which arises out of a transfer of real property from a nonprofit  
100 organization to the Board of Trustees of the Internal  
101 Improvement Trust Fund, to any state agency, to any water  
102 management district, or to any local government. For purposes of  
103 this subsection, "nonprofit organization" means an organization  
104 whose purpose is the preservation of natural resources and which  
105 is exempt from federal income tax under s. 501(c)(3) of the  
106 Internal Revenue Code. The Department of Revenue shall provide a  
107 form, or a place on an existing form, for the nonprofit  
108 organization to indicate its exempt status.

109 (7) Taxes imposed by this section do not apply to a deed,  
110 transfer, or conveyance between spouses or former spouses  
111 pursuant to an action for dissolution of their marriage wherein  
112 the real property is or was their marital home or an interest  
113 therein. Taxes paid pursuant to this section shall be refunded  
114 in those cases in which a deed, transfer, or conveyance occurred  
115 1 year before a dissolution of marriage. This subsection applies  
116 in spite of any consideration as defined in subsection (1). This

6-00832-09

20091510\_\_

117 subsection does not apply to a deed, transfer, or conveyance  
118 executed before July 1, 1997.

119 (8) Taxes imposed by this section do not apply to a  
120 contract to sell the residence of an employee relocating at his  
121 or her employer's direction or to documents related to the  
122 contract, which contract is between the employee and the  
123 employer or between the employee and a person in the business of  
124 providing employee relocation services. In the case of such  
125 transactions, taxes apply only to the transfer of the real  
126 property comprising the residence by deed that vests legal title  
127 in a named grantee.

128 (9) A certificate of title issued by the clerk of court  
129 under s. 45.031(5) in a judicial sale of real property under an  
130 order or final judgment issued pursuant to a foreclosure  
131 proceeding is subject to the tax imposed by subsection (1).  
132 However, the amount of the tax shall be computed based solely on  
133 the amount of the highest and best bid received for the property  
134 at the foreclosure sale. This subsection is intended to clarify  
135 existing law and shall be applied retroactively.

136 (10) (a) In recognition of the special escrow requirements  
137 that apply to sales of timeshare interests in timeshare plans  
138 pursuant to s. 721.08, tax on deeds or other instruments  
139 conveying any interest in Florida real property which are  
140 executed in conjunction with the sale by a developer of a  
141 timeshare interest in a timeshare plan is due and payable on the  
142 earlier of the date on which:

143 1. The deed or other instrument conveying the interest in  
144 Florida real property is recorded; or

145 2. All of the conditions precedent to the release of the

6-00832-09

20091510\_\_

146 purchaser's escrowed funds or other property pursuant to s.  
147 721.08(2)(c) have been met, regardless of whether the developer  
148 has posted an alternative assurance. Tax due pursuant to this  
149 subparagraph is due and payable on or before the 20th day of the  
150 month following the month in which these conditions were met.

151 (b)1. If tax has been paid to the department pursuant to  
152 subparagraph (a)2., and the deed or other instrument conveying  
153 the interest in Florida real property with respect to which the  
154 tax was paid is subsequently recorded, a notation reflecting the  
155 prior payment of the tax must be made upon the deed or other  
156 instrument conveying the interest in Florida real property.

157 2. Notwithstanding paragraph (a), if funds are designated  
158 on a closing statement as tax collected from the purchaser, but  
159 a default or cancellation occurs pursuant to s. 721.08(2)(a) or  
160 (b) and no deed or other instrument conveying interest in  
161 Florida real property has been recorded or delivered to the  
162 purchaser, the tax must be paid to the department on or before  
163 the 20th day of the month following the month in which the funds  
164 are available for release from escrow unless the funds have been  
165 refunded to the purchaser.

166 (c) The department may adopt rules to administer the method  
167 for reporting tax due under this subsection.

168 Section 2. This act shall take effect upon becoming a law.