



593-04161-09

Proposed Committee Substitute by the Committee on Finance and  
Tax

1                   A bill to be entitled  
2           An act relating to the discretionary surtax on  
3           documents; amending s. 3, ch. 83-220, Laws of Florida,  
4           as amended; extending a future repeal date of  
5           provisions authorizing counties to levy a  
6           discretionary surtax on documents; amending s.  
7           125.0167, F.S.; limiting the percentage of surtax  
8           revenues that may be used for administrative costs;  
9           specifying a minimum amount of surtax revenues to be  
10          used for housing for certain low-income and moderate-  
11          income families; requiring an affirmative vote of a  
12          local government governing body to rehabilitate  
13          certain government-owned housing; authorizing certain  
14          counties to create by ordinance a housing choice  
15          assistance voucher program for the purpose of down  
16          payment assistance; providing definitions; providing  
17          eligibility requirements for such vouchers;  
18          authorizing purchasing employers to file for  
19          allocations for such vouchers; limiting allocations;  
20          requiring distribution of allocations to employees in  
21          the form of such vouchers; prohibiting use of  
22          allocations for such vouchers if not awarded within a  
23          certain period after certain documentary stamps taxes  
24          are collected; requiring the Office of Program Policy  
25          Analysis and Government Accountability to conduct a  
26          continuing review of the discretionary surtax program  
27          operated by counties; requiring reports to the



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28           Legislature; amending s. 201.02, F.S.; applying the  
29           excise tax on documents to certain transfers involving  
30           certain legal entities; providing for a credit against  
31           the tax under certain circumstances; specifying the  
32           rate of tax; imposing the tax on deeds, instruments,  
33           and other writings on the consideration for a transfer  
34           of real property pursuant to a short sale; providing  
35           that the consideration subject to the tax does not  
36           include unpaid indebtedness that is forgiven by a  
37           mortgagee; defining the term "short sale"; authorizing  
38           the Department of Revenue to adopt criteria by rule  
39           indicating that a purported short sale is not an arm's  
40           length transaction; authorizing the Department of  
41           Revenue to adopt emergency rules; amending s. 201.031,  
42           F.S.; expanding requirements for counties levying the  
43           discretionary surtax to include housing plan,  
44           affordable housing element, and annual reporting  
45           requirements; amending s. 719.105, F.S.; conforming a  
46           cross-reference; providing for application of  
47           specified provisions of the act; providing effective  
48           dates.

49

50 Be It Enacted by the Legislature of the State of Florida:

51

52           Section 1. Section 3 of chapter 83-220, Laws of Florida, as  
53           amended by section 1 of chapter 84-270, Laws of Florida, and  
54           section 1 of chapter 89-252, Laws of Florida, is amended to  
55           read:

56           Section 3. Sections 1 and 2 of chapter 83-220, Laws of



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57 Florida, as amended by this act, are repealed effective October  
58 1, 2031 ~~2011~~.

59 Section 2. Section 125.0167, Florida Statutes, is amended  
60 to read:

61 125.0167 Discretionary surtax on documents; adoption;  
62 application of revenue.—

63 (1) Pursuant to the provisions of s. 201.031, the governing  
64 authority in each county, as defined by s. 125.011(1), is  
65 authorized to levy a discretionary surtax on documents for the  
66 purpose of establishing and financing a Housing Assistance Loan  
67 Trust Fund to assist in the financing of construction,  
68 rehabilitation, or purchase of housing for low-income and  
69 moderate-income families. No less than 50 percent of the funds  
70 used in each county to provide such housing assistance shall be  
71 for the benefit of low-income families. For the purpose of this  
72 section, "low-income family" means a family whose income does  
73 not exceed 80 percent of the median income for the area, and  
74 "moderate-income family" means a family whose income is in  
75 excess of 80 percent but less than 140 percent of the median  
76 income for the area. For purposes of this section, the term  
77 "housing" is not limited to single-family, detached dwellings.  
78 The rate of the surtax shall not exceed the rate of 45 cents for  
79 each \$100 or fractional part thereof of the consideration  
80 therefor. Such surtax shall apply only to those documents  
81 taxable under s. 201.02, except that there shall be no surtax on  
82 any document pursuant to which the interest granted, assigned,  
83 transferred, or conveyed involves only a single-family  
84 residence. Such single-family residence may be a condominium  
85 unit, a unit held through stock ownership or membership



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86 representing a proprietary interest in a corporation owning a  
87 fee or a leasehold initially in excess of 98 years, or a  
88 detached dwelling.

89 (2) The levy of the discretionary surtax and the creation  
90 of a Housing Assistance Loan Trust Fund shall be by ordinance  
91 which shall set forth the policies and procedures of the  
92 assistance program. The ordinance shall be proposed at a regular  
93 meeting of the governing authority at least 2 weeks prior to  
94 formal adoption. Formal adoption shall not be effective unless  
95 approved on final vote by a majority of the total membership of  
96 the governing authority. The ordinance shall not take effect  
97 until 90 days after formal adoption.

98 (3) The county shall deposit revenues from the  
99 discretionary surtax in the Housing Assistance Loan Trust Fund  
100 of the county, except that a portion of such revenues may be  
101 deposited into the Home Investment Trust Fund of the county as  
102 defined by and created pursuant to the requirements of federal  
103 law. The county shall use the revenues only to help finance the  
104 construction, rehabilitation, or purchase of housing for low-  
105 income families and moderate-income families, to pay necessary  
106 costs of collection and enforcement of the surtax, and to fund  
107 any local matching contributions required pursuant to federal  
108 law. For purposes of this section, authorized uses of the  
109 revenues include, but are not limited to, providing funds for  
110 first and second mortgages and acquiring property for the  
111 purpose of forming housing cooperatives. Special consideration  
112 shall be given toward using the revenues in the neighborhood  
113 economic development programs of community development  
114 corporations. No more than 50 percent of the revenues collected



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115 each year pursuant to this section may be used to help finance  
116 new construction as provided herein. The proceeds of the surtax  
117 shall not be used for rent subsidies or grants.

118 (4) No more than 10 percent of surtax revenues collected  
119 under this section by the Department of Revenue and remitted to  
120 the county in any fiscal year may be used for administrative  
121 costs.

122 (5) (a) Notwithstanding the provisions of subsection (3), of  
123 the discretionary surtax revenues collected by the Department of  
124 Revenue remaining after any deduction for administrative costs  
125 as provided in subsection (4), no less than 35 percent shall be  
126 used to provide homeownership assistance for low-income and  
127 moderate-income families, and no less than 35 percent shall be  
128 used for construction, rehabilitation, and purchase of rental  
129 housing units. The remaining amount may be allocated to provide  
130 for homeownership assistance or rental housing units, at the  
131 discretion of the county. Any funds allocated for homeownership  
132 assistance or rental housing units which are not committed at  
133 the end of the fiscal year shall be available for homeownership  
134 assistance or construction, rehabilitation, and purchase of  
135 rental housing units in subsequent years.

136 (b) For purposes of this subsection, the term  
137 "homeownership assistance" means assisting low-income and  
138 moderate-income families in purchasing a home as their primary  
139 residence, including, but not limited to, reducing the cost of  
140 the home with below-market construction financing, the amount of  
141 down payment and closing costs paid by the borrower, or the  
142 mortgage payment to an affordable amount for the purchaser or  
143 using any other financial assistance measure set forth in s.



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144 420.5088.

145 (6) Rehabilitation of housing owned by a recipient  
146 government may be authorized only after a determination approved  
147 by a majority of the governing body that no other sources of  
148 funds are available.

149 (7) (a) The governing body of each county as defined in s.  
150 125.011(1) may, by county ordinance and pursuant to procedures  
151 and requirements provided by such ordinance, create a housing  
152 choice assistance voucher program.

153 (b) For purposes of this subsection, the term:

154 1. "Housing choice assistance voucher" means the document  
155 used to access assistance paid by the county from the  
156 discretionary surtax balance in the Housing Assistance Trust  
157 Fund to a prospective purchaser of a single-family residence,  
158 which must be the purchaser's homestead.

159 2. "Purchasing employer" means a business or business  
160 entity that has acquired real property within the county and  
161 paid the surtax due as a result of the acquisition of that  
162 property pursuant to this section.

163 (c) Housing choice assistance vouchers shall be used for  
164 down payment assistance for the purchase of a single-family  
165 residence by low-income or moderate-income persons within the  
166 county and within a 5-mile radius of the purchasing employer who  
167 are:

168 1. Actively employed by the purchasing employer or by a  
169 business entity directly affiliated with the purchasing  
170 employer.

171 2. Prequalified for a mortgage loan by a certified lending  
172 institution.



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173       (d) Upon payment of the discretionary surtax pursuant to  
174 this section, the purchasing employer may file for an allocation  
175 for housing choice assistance vouchers from the county in an  
176 amount not to exceed 50 percent of the amount of the  
177 discretionary surtax paid. The purchasing employer shall  
178 distribute the allocation to employees in the form of housing  
179 choice assistance vouchers pursuant to rules and procedures  
180 established for the program.

181       (e) Any housing choice assistance voucher allocation not  
182 distributed to employees and redeemed by an employee within 1  
183 year after the date the discretionary surtax is paid may not be  
184 used for housing choice assistance vouchers under this  
185 subsection.

186       (f) Any housing assistance paid pursuant to the housing  
187 choice assistance voucher program shall be included in the  
188 calculation determining the percentage of discretionary surtax  
189 funds used for homeownership purposes during the year in which  
190 the surtax funds for such purposes are expended.

191       (8) By June 30, 2012, and every 5 years thereafter, the  
192 Office of Program Policy Analysis and Government Accountability  
193 shall review the discretionary surtax program operated by  
194 counties under this section and shall provide a report to the  
195 President of the Senate and the Speaker of the House of  
196 Representatives.

197       Section 3. Section 201.02, Florida Statutes, is amended to  
198 read:

199       201.02 Tax on deeds and other instruments relating to real  
200 property or interests in real property.—

201       (1) On deeds, instruments, documents, or writings whereby



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202 any lands, tenements, or other real property, or any interest  
203 therein, shall be granted, assigned, transferred, or otherwise  
204 conveyed to, or vested in, the purchaser or any other person by  
205 his or her direction, on each \$100 of the consideration therefor  
206 the tax shall be 70 cents. When the full amount of the  
207 consideration for the execution, assignment, transfer, or  
208 conveyance is not shown in the face of such deed, instrument,  
209 document, or writing, the tax shall be at the rate of 70 cents  
210 for each \$100 or fractional part thereof of the consideration  
211 therefor. For purposes of this section, consideration includes,  
212 but is not limited to, the money paid or agreed to be paid; the  
213 discharge of an obligation; and the amount of any mortgage,  
214 purchase money mortgage lien, or other encumbrance, whether or  
215 not the underlying indebtedness is assumed. If the consideration  
216 paid or given in exchange for real property or any interest  
217 therein includes property other than money, it is presumed that  
218 the consideration is equal to the fair market value of the real  
219 property or interest therein.

220 (2) (a) A tax is hereby imposed on all transfers of an  
221 ownership interest in real property which entitle the purchaser  
222 to the use or occupancy of land, including transfers of  
223 beneficial ownership interests, when the transfer is by means of  
224 the sale or exchange of shares, or of comparable rights or  
225 property interests, in a real property entity.

226 (b) A real property entity is a corporation, limited  
227 liability company, or any other form of organization or legal  
228 entity, such as a trust, which owns real property that  
229 constitutes at least 80 percent of the value of the entity's  
230 assets.





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231       (c) If a transfer that is taxable under this subsection  
232 also involves an instrument, document, or writing that is  
233 taxable under subsection (1), a credit against the tax imposed  
234 under this subsection shall be given for any tax paid pursuant  
235 to subsection (1) if the taxable instrument, document, or  
236 writing is executed coincident to the transfer. To qualify for  
237 this credit, the person liable for payment of the tax imposed  
238 under subsection (1) must:

239       1. Cause a notation to be made on the document taxable  
240 pursuant to subsection (1), filed in the public records, which  
241 identifies the persons party to the transfer and states the  
242 amount of tax paid; and

243       2. Include evidence in its return as specified by rule of  
244 the department showing payment of the tax imposed under  
245 subsection (1).

246       (d) The tax imposed by this subsection shall be at the rate  
247 of 70 cents for each \$100 or fractional part thereof or such  
248 other rate provided by law or local ordinance. The tax is  
249 imposed on the present fair market value of the real property  
250 multiplied by the percentage of interest transferred. The tax  
251 shall be due, collected, and remitted in the same manner as the  
252 tax imposed under subsection (1). The fair market value of the  
253 real property is measured without reduction for any lien,  
254 mortgage indebtedness, or other encumbrance.

255       (e) For purposes of this subsection, a transfer does not  
256 occur upon a trade or sale of the regulated security of a public  
257 company.

258       (f) For each transfer of an interest in real property  
259 subject to tax imposed by this subsection, the grantor and the



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260 grantee shall file a joint return on a form prescribed by the  
261 department.

262 (g) The tax imposed by this subsection does not apply to a  
263 transfer between a person or persons and a legal entity or  
264 entities that results solely in a change in the method of  
265 holding title or to the form of its ownership and in which the  
266 proportional beneficial interests of all parties remain the same  
267 before and after the transfer.

268 (h) The tax imposed by this subsection does not apply to  
269 transfers between a family corporation, family partnership,  
270 family limited partnership, family trust, or family limited  
271 liability company and its stockholders, partners, limited  
272 partners, beneficiaries, or members for the purpose of  
273 transferring real property in the organization, dissolution, or  
274 liquidation of the family corporation, family partnership,  
275 family limited partnership, family trust, or family limited  
276 liability company under the laws of this state if the transfer  
277 is made for no consideration other than shares, interests, or  
278 debt securities of the family corporation, family partnership,  
279 family limited partnership, family trust, or the family limited  
280 liability company. For purposes of this paragraph, a family  
281 corporation, family partnership, family limited partnership,  
282 family trust, or a family limited liability company is an entity  
283 in which the majority of the voting stock or ownership interest  
284 is held by persons who are related to each other, including by  
285 adoption, as descendants, spouses, parents, grandparents, lineal  
286 ascendants of grandparents or their spouses, or persons acting  
287 in a fiduciary capacity for persons so related.

288 (i) The provisions of subsections (7)-(12) apply to the tax



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289 imposed by this subsection.

290 (3)~~(2)~~ The tax imposed by subsection (1) shall also be  
291 payable upon documents by which the right is granted to a  
292 tenant-stockholder to occupy an apartment in a building owned by  
293 a cooperative apartment corporation or in a dwelling on real  
294 property owned by any other form of cooperative association as  
295 defined in s. 719.103.

296 (4)~~(3)~~ The tax imposed by subsection (2) shall be paid by  
297 the purchaser, and the document recorded in the office of the  
298 clerk of the circuit court as evidence of ownership.

299 (5)~~(4)~~ The tax imposed by subsection (1) shall also be  
300 payable upon documents which convey or transfer, pursuant to s.  
301 689.071, any beneficial interest in lands, tenements, or other  
302 real property, or any interest therein, even though such  
303 interest may be designated as personal property, notwithstanding  
304 the provisions of s. 689.071(6). The tax shall be paid upon  
305 execution of any such document.

306 (6)~~(5)~~ All conveyances of real property to a partner from a  
307 partnership which property was conveyed to the partnership after  
308 July 1, 1986, are taxable if:

309 (a) The partner receiving the real property from the  
310 partnership is a partner other than the partner who conveyed the  
311 real property to the partnership; or

312 (b) The partner receiving the real property from the  
313 partnership is the partner who conveyed the real property to the  
314 partnership and there is a mortgage debt or other debt secured  
315 by such real property for which the partner was not personally  
316 liable prior to conveying the real property to the partnership.

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318 For purposes of this subsection, the value of the consideration  
319 paid for the conveyance of the real property to the partner from  
320 the partnership includes, but is not limited to, the amount of  
321 any outstanding mortgage debt or other debt which the partner  
322 pays or agrees to pay in exchange for the real property,  
323 regardless of whether the partner was personally liable for the  
324 debts of the partnership prior to the conveyance to the partner  
325 from the partnership.

326 (7)~~(6)~~ Taxes imposed by this section shall not apply to any  
327 assignment, transfer, or other disposition, or any document,  
328 which arises out of a transfer of real property from a nonprofit  
329 organization to the Board of Trustees of the Internal  
330 Improvement Trust Fund, to any state agency, to any water  
331 management district, or to any local government. For purposes of  
332 this subsection, "nonprofit organization" means an organization  
333 whose purpose is the preservation of natural resources and which  
334 is exempt from federal income tax under s. 501(c)(3) of the  
335 Internal Revenue Code. The Department of Revenue shall provide a  
336 form, or a place on an existing form, for the nonprofit  
337 organization to indicate its exempt status.

338 (8)~~(7)~~ Taxes imposed by this section do not apply to a  
339 deed, transfer, or conveyance between spouses or former spouses  
340 pursuant to an action for dissolution of their marriage wherein  
341 the real property is or was their marital home or an interest  
342 therein. Taxes paid pursuant to this section shall be refunded  
343 in those cases in which a deed, transfer, or conveyance occurred  
344 1 year before a dissolution of marriage. This subsection applies  
345 in spite of any consideration as defined in subsection (1). This  
346 subsection does not apply to a deed, transfer, or conveyance



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347 executed before July 1, 1997.

348 ~~(9)(8)~~ Taxes imposed by this section do not apply to a  
349 contract to sell the residence of an employee relocating at his  
350 or her employer's direction or to documents related to the  
351 contract, which contract is between the employee and the  
352 employer or between the employee and a person in the business of  
353 providing employee relocation services. In the case of such  
354 transactions, taxes apply only to the transfer of the real  
355 property comprising the residence by deed that vests legal title  
356 in a named grantee.

357 ~~(10)(9)~~ A certificate of title issued by the clerk of court  
358 under s. 45.031(5) in a judicial sale of real property under an  
359 order or final judgment issued pursuant to a foreclosure  
360 proceeding is subject to the tax imposed by subsection (1).  
361 However, the amount of the tax shall be computed based solely on  
362 the amount of the highest and best bid received for the property  
363 at the foreclosure sale. This subsection is intended to clarify  
364 existing law and shall be applied retroactively.

365 ~~(11)(10)~~(a) In recognition of the special escrow  
366 requirements that apply to sales of timeshare interests in  
367 timeshare plans pursuant to s. 721.08, tax on deeds or other  
368 instruments conveying any interest in Florida real property  
369 which are executed in conjunction with the sale by a developer  
370 of a timeshare interest in a timeshare plan is due and payable  
371 on the earlier of the date on which:

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

374 2. All of the conditions precedent to the release of the  
375 purchaser's escrowed funds or other property pursuant to s.



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376 721.08(2)(c) have been met, regardless of whether the developer  
377 has posted an alternative assurance. Tax due pursuant to this  
378 subparagraph is due and payable on or before the 20th day of the  
379 month following the month in which these conditions were met.

380 (b)1. If tax has been paid to the department pursuant to  
381 subparagraph (a)2., and the deed or other instrument conveying  
382 the interest in Florida real property with respect to which the  
383 tax was paid is subsequently recorded, a notation reflecting the  
384 prior payment of the tax must be made upon the deed or other  
385 instrument conveying the interest in Florida real property.

386 2. Notwithstanding paragraph (a), if funds are designated  
387 on a closing statement as tax collected from the purchaser, but  
388 a default or cancellation occurs pursuant to s. 721.08(2)(a) or  
389 (b) and no deed or other instrument conveying interest in  
390 Florida real property has been recorded or delivered to the  
391 purchaser, the tax must be paid to the department on or before  
392 the 20th day of the month following the month in which the funds  
393 are available for release from escrow unless the funds have been  
394 refunded to the purchaser.

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

397 (12) The documentary stamp tax imposed by this section  
398 applies to a deed, instrument, or writing that transfers any  
399 interest in real property pursuant to a short sale, as defined  
400 in this subsection. The taxable consideration for a short sale  
401 transfer does not include unpaid indebtedness that is forgiven  
402 or released by a mortgagee holding a mortgage on the grantor's  
403 interest in the property. A short sale is a purchase and sale of  
404 real property in which:



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405 (a) The grantor's interest in the real property is  
406 encumbered by a mortgage or mortgages securing indebtedness in  
407 an aggregate amount greater than the purchase price paid by the  
408 grantee;

409 (b) A mortgagee releases the real property from its  
410 mortgage in exchange for a partial payment of less than all of  
411 the outstanding mortgage indebtedness owing to the releasing  
412 mortgagee;

413 (c) The releasing mortgagee does not receive, directly or  
414 indirectly, any interest in the property transferred; and

415 (d) The releasing mortgagee, grantor, and grantee are  
416 dealing with each other at arm's length.

417 Section 4. The Department of Revenue may adopt rules to  
418 specify criteria indicating that a purported short sale is not  
419 an arm's length transaction.

420 Section 5. Effective upon this act becoming a law, the  
421 Department of Revenue is authorized, and all conditions are  
422 deemed met, to adopt emergency rules under ss. 120.536(1) and  
423 120.54(4), Florida Statutes, to implement section 3 of this act.  
424 Notwithstanding any other provision of law, such emergency rules  
425 shall remain effective for 6 months after the date of adoption  
426 and may be renewed during the pendency of procedures to adopt  
427 rules addressing the subject of the emergency rules.

428 Section 6. Section 201.031, Florida Statutes, is amended to  
429 read:

430 201.031 Discretionary surtax; administration and  
431 collection; Housing Assistance Loan Trust Fund; reporting  
432 requirements.-

433 (1) Each county, as defined by s. 125.011(1), may levy,



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434 subject to the provisions of s. 125.0167, a discretionary surtax  
435 on documents taxable under the provisions of s. 201.02, except  
436 that there shall be no surtax on any document pursuant to which  
437 the interest granted, assigned, transferred, or conveyed  
438 involves only a single-family residence. The ~~Such~~ single-family  
439 residence may be a condominium unit, a unit held through stock  
440 ownership or membership representing a proprietary interest in a  
441 corporation owning a fee or a leasehold initially in excess of  
442 98 years, or a detached dwelling.

443 (2) All provisions of chapter 201, except s. 201.15, ~~shall~~  
444 apply to the surtax. The Department of Revenue shall pay to the  
445 governing authority of the county which levies the surtax all  
446 taxes, penalties, and interest collected under this section less  
447 any costs of administration.

448 (3) Each county that ~~which~~ levies the surtax shall:

449 (a) Include in the financial report required under s.  
450 218.32 information showing the revenues and the expenses of the  
451 trust fund for the fiscal year.

452 (b) Adopt a housing plan every 3 years which includes  
453 provisions substantially similar to the plans required in s.  
454 420.9075(1).

455 (c) Have adopted an affordable housing element of its  
456 comprehensive land use plan which complies with s.  
457 163.3177(6) (f).

458 (d) Require by resolution that the staff or entity that has  
459 administrative authority for implementing the housing plan  
460 prepare and submit to the county's governing body an annual  
461 report substantially similar to the annual report required in s.  
462 420.9075(10).





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463 Section 7. Paragraph (a) of subsection (1) of section  
464 719.105, Florida Statutes, is amended to read:

465 719.105 Cooperative parcels; appurtenances; possession and  
466 enjoyment.—

467 (1) Each cooperative parcel has, as appurtenances thereto:

468 (a) Evidence of membership, ownership of shares, or other  
469 interest in the association with the full voting rights  
470 appertaining thereto. Such evidence must include a legal  
471 description of each dwelling unit and must be recorded in the  
472 office of the clerk of the circuit court as required by s.  
473 201.02(4) ~~s. 201.02(3)~~.

474 Section 8. Except as otherwise expressly provided in this  
475 act and except for this section, which shall take effect upon  
476 becoming a law, this act shall take effect July 1, 2009, and  
477 section 3 of this act applies to transfers of real property  
478 occurring on or after July 1, 2009.