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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/18/2009	.	
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The Committee on Judiciary (Baker) recommended the following:

Senate Amendment (with title amendment)

Delete lines 9 - 35

and insert:

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

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

(1) On deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or



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13 her direction, on each \$100 of the consideration therefor the
14 tax shall be 70 cents. When the full amount of the consideration
15 for the execution, assignment, transfer, or conveyance is not
16 shown in the face of such deed, instrument, document, or
17 writing, the tax shall be at the rate of 70 cents for each \$100
18 or fractional part thereof of the consideration therefor. For
19 purposes of this section, consideration includes, but is not
20 limited to, the money paid or agreed to be paid; the discharge
21 of an obligation; and the amount of any mortgage, purchase money
22 mortgage lien, or other encumbrance, whether or not the
23 underlying indebtedness is assumed. If the consideration paid or
24 given in exchange for real property or any interest therein
25 includes property other than money, it is presumed that the
26 consideration is equal to the fair market value of the real
27 property or interest therein.

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

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

37 (4) The tax imposed by subsection (1) shall also be payable
38 upon documents which convey or transfer, pursuant to s. 689.071,
39 any beneficial interest in lands, tenements, or other real
40 property, or any interest therein, even though such interest may
41 be designated as personal property, notwithstanding the



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42 provisions of s. 689.071(6). The tax shall be paid upon
43 execution of any such document.

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

47 (a) The partner receiving the real property from the
48 partnership is a partner other than the partner who conveyed the
49 real property to the partnership; or

50 (b) The partner receiving the real property from the
51 partnership is the partner who conveyed the real property to the
52 partnership and there is a mortgage debt or other debt secured
53 by such real property for which the partner was not personally
54 liable prior to conveying the real property to the partnership.

55
56 For purposes of this subsection, the value of the consideration
57 paid for the conveyance of the real property to the partner from
58 the partnership includes, but is not limited to, the amount of
59 any outstanding mortgage debt or other debt which the partner
60 pays or agrees to pay in exchange for the real property,
61 regardless of whether the partner was personally liable for the
62 debts of the partnership prior to the conveyance to the partner
63 from the partnership.

64 (6) Taxes imposed by this section shall not apply to any
65 assignment, transfer, or other disposition, or any document,
66 which arises out of a transfer of real property from a nonprofit
67 organization to the Board of Trustees of the Internal
68 Improvement Trust Fund, to any state agency, to any water
69 management district, or to any local government. For purposes of
70 this subsection, "nonprofit organization" means an organization



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71 whose purpose is the preservation of natural resources and which
72 is exempt from federal income tax under s. 501(c)(3) of the
73 Internal Revenue Code. The Department of Revenue shall provide a
74 form, or a place on an existing form, for the nonprofit
75 organization to indicate its exempt status.

76 (7) Taxes imposed by this section do not apply to a deed,
77 transfer, or conveyance between spouses or former spouses
78 pursuant to an action for dissolution of their marriage wherein
79 the real property is or was their marital home or an interest
80 therein. Taxes paid pursuant to this section shall be refunded
81 in those cases in which a deed, transfer, or conveyance occurred
82 1 year before a dissolution of marriage. This subsection applies
83 in spite of any consideration as defined in subsection (1). This
84 subsection does not apply to a deed, transfer, or conveyance
85 executed before July 1, 1997.

86 (8) Taxes imposed by this section do not apply to a
87 contract to sell the residence of an employee relocating at his
88 or her employer's direction or to documents related to the
89 contract, which contract is between the employee and the
90 employer or between the employee and a person in the business of
91 providing employee relocation services. In the case of such
92 transactions, taxes apply only to the transfer of the real
93 property comprising the residence by deed that vests legal title
94 in a named grantee.

95 (9) A certificate of title issued by the clerk of court
96 under s. 45.031(5) in a judicial sale of real property under an
97 order or final judgment issued pursuant to a foreclosure
98 proceeding is subject to the tax imposed by subsection (1).
99 However, the amount of the tax shall be computed based solely on



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100 the amount of the highest and best bid received for the property
101 at the foreclosure sale. This subsection is intended to clarify
102 existing law and shall be applied retroactively.

103 (10) (a) In recognition of the special escrow requirements
104 that apply to sales of timeshare interests in timeshare plans
105 pursuant to s. 721.08, tax on deeds or other instruments
106 conveying any interest in Florida real property which are
107 executed in conjunction with the sale by a developer of a
108 timeshare interest in a timeshare plan is due and payable on the
109 earlier of the date on which:

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

112 2. All of the conditions precedent to the release of the
113 purchaser's escrowed funds or other property pursuant to s.
114 721.08(2) (c) have been met, regardless of whether the developer
115 has posted an alternative assurance. Tax due pursuant to this
116 subparagraph is due and payable on or before the 20th day of the
117 month following the month in which these conditions were met.

118 (b)1. If tax has been paid to the department pursuant to
119 subparagraph (a)2., and the deed or other instrument conveying
120 the interest in Florida real property with respect to which the
121 tax was paid is subsequently recorded, a notation reflecting the
122 prior payment of the tax must be made upon the deed or other
123 instrument conveying the interest in Florida real property.

124 2. Notwithstanding paragraph (a), if funds are designated
125 on a closing statement as tax collected from the purchaser, but
126 a default or cancellation occurs pursuant to s. 721.08(2) (a) or
127 (b) and no deed or other instrument conveying interest in
128 Florida real property has been recorded or delivered to the



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129 purchaser, the tax must be paid to the department on or before
130 the 20th day of the month following the month in which the funds
131 are available for release from escrow unless the funds have been
132 refunded to the purchaser.

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

135 (11) The documentary stamp tax imposed by this section
136 applies to a deed, instrument, or writing that transfers any
137 interest in real property pursuant to a short sale, as defined
138 in this subsection. The taxable consideration for a short sale
139 transfer does not include unpaid indebtedness that is forgiven
140 or released by a mortgagee holding a mortgage on the grantor's
141 interest in the property. A short sale is a purchase and sale of
142 real property in which:

143 (a) The grantor's interest in the real property is
144 encumbered by a mortgage or mortgages securing indebtedness in
145 an aggregate amount greater than the purchase price paid by the
146 grantee;

147 (b) A mortgagee releases the real property from its
148 mortgage in exchange for a partial payment of less than all of
149 the outstanding mortgage indebtedness owing to the releasing
150 mortgagee;

151 (c) Neither the releasing mortgagee nor any person related
152 to the releasing mortgagee receives any interest in the property
153 transferred; and

154 (d) The releasing mortgagee is not controlled by or related
155 to the grantor or the grantee, and the grantor and the grantee
156 are not controlled by or related to each other.

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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 5

and insert:

amending s. 201.02, F.S.; imposing the tax on deeds,
instruments, and other writings on the consideration for a
transfer of real property pursuant to a short sale; providing
that the consideration subject to the tax does not include
unpaid indebtedness that is forgiven by a mortgagee; defining
the term "short sale"; providing an effective date.