

**By** the Committees on Finance and Tax; and Judiciary; and Senator Bennett

593-04159-09

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1                   A bill to be entitled  
2           An act relating to the excise tax on documents;  
3           amending s. 201.02, F.S.; imposing the tax on deeds,  
4           instruments, and other writings on the consideration  
5           for a transfer of real property pursuant to a short  
6           sale; providing that the consideration subject to the  
7           tax does not include unpaid indebtedness that is  
8           forgiven by a mortgagee; defining the term "short  
9           sale"; authorizing the Department of Revenue to adopt  
10          criteria by rule indicating that a purported short  
11          sale is not an arm's length transaction; providing an  
12          effective date.

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

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

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

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

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30 purposes of this section, consideration includes, but is not  
31 limited to, the money paid or agreed to be paid; the discharge  
32 of an obligation; and the amount of any mortgage, purchase money  
33 mortgage lien, or other encumbrance, whether or not the  
34 underlying indebtedness is assumed. If the consideration paid or  
35 given in exchange for real property or any interest therein  
36 includes property other than money, it is presumed that the  
37 consideration is equal to the fair market value of the real  
38 property or interest therein.

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

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

48 (4) The tax imposed by subsection (1) shall also be payable  
49 upon documents which convey or transfer, pursuant to s. 689.071,  
50 any beneficial interest in lands, tenements, or other real  
51 property, or any interest therein, even though such interest may  
52 be designated as personal property, notwithstanding the  
53 provisions of s. 689.071(6). The tax shall be paid upon  
54 execution of any such document.

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

58 (a) The partner receiving the real property from the

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59 partnership is a partner other than the partner who conveyed the  
60 real property to the partnership; or

61 (b) The partner receiving the real property from the  
62 partnership is the partner who conveyed the real property to the  
63 partnership and there is a mortgage debt or other debt secured  
64 by such real property for which the partner was not personally  
65 liable prior to conveying the real property to the partnership.  
66

67 For purposes of this subsection, the value of the consideration  
68 paid for the conveyance of the real property to the partner from  
69 the partnership includes, but is not limited to, the amount of  
70 any outstanding mortgage debt or other debt which the partner  
71 pays or agrees to pay in exchange for the real property,  
72 regardless of whether the partner was personally liable for the  
73 debts of the partnership prior to the conveyance to the partner  
74 from the partnership.

75 (6) Taxes imposed by this section shall not apply to any  
76 assignment, transfer, or other disposition, or any document,  
77 which arises out of a transfer of real property from a nonprofit  
78 organization to the Board of Trustees of the Internal  
79 Improvement Trust Fund, to any state agency, to any water  
80 management district, or to any local government. For purposes of  
81 this subsection, "nonprofit organization" means an organization  
82 whose purpose is the preservation of natural resources and which  
83 is exempt from federal income tax under s. 501(c)(3) of the  
84 Internal Revenue Code. The Department of Revenue shall provide a  
85 form, or a place on an existing form, for the nonprofit  
86 organization to indicate its exempt status.

87 (7) Taxes imposed by this section do not apply to a deed,

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88 transfer, or conveyance between spouses or former spouses  
89 pursuant to an action for dissolution of their marriage wherein  
90 the real property is or was their marital home or an interest  
91 therein. Taxes paid pursuant to this section shall be refunded  
92 in those cases in which a deed, transfer, or conveyance occurred  
93 1 year before a dissolution of marriage. This subsection applies  
94 in spite of any consideration as defined in subsection (1). This  
95 subsection does not apply to a deed, transfer, or conveyance  
96 executed before July 1, 1997.

97 (8) Taxes imposed by this section do not apply to a  
98 contract to sell the residence of an employee relocating at his  
99 or her employer's direction or to documents related to the  
100 contract, which contract is between the employee and the  
101 employer or between the employee and a person in the business of  
102 providing employee relocation services. In the case of such  
103 transactions, taxes apply only to the transfer of the real  
104 property comprising the residence by deed that vests legal title  
105 in a named grantee.

106 (9) A certificate of title issued by the clerk of court  
107 under s. 45.031(5) in a judicial sale of real property under an  
108 order or final judgment issued pursuant to a foreclosure  
109 proceeding is subject to the tax imposed by subsection (1).  
110 However, the amount of the tax shall be computed based solely on  
111 the amount of the highest and best bid received for the property  
112 at the foreclosure sale. This subsection is intended to clarify  
113 existing law and shall be applied retroactively.

114 (10) (a) In recognition of the special escrow requirements  
115 that apply to sales of timeshare interests in timeshare plans  
116 pursuant to s. 721.08, tax on deeds or other instruments

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117 conveying any interest in Florida real property which are  
118 executed in conjunction with the sale by a developer of a  
119 timeshare interest in a timeshare plan is due and payable on the  
120 earlier of the date on which:

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

123 2. All of the conditions precedent to the release of the  
124 purchaser's escrowed funds or other property pursuant to s.  
125 721.08(2)(c) have been met, regardless of whether the developer  
126 has posted an alternative assurance. Tax due pursuant to this  
127 subparagraph is due and payable on or before the 20th day of the  
128 month following the month in which these conditions were met.

129 (b)1. If tax has been paid to the department pursuant to  
130 subparagraph (a)2., and the deed or other instrument conveying  
131 the interest in Florida real property with respect to which the  
132 tax was paid is subsequently recorded, a notation reflecting the  
133 prior payment of the tax must be made upon the deed or other  
134 instrument conveying the interest in Florida real property.

135 2. Notwithstanding paragraph (a), if funds are designated  
136 on a closing statement as tax collected from the purchaser, but  
137 a default or cancellation occurs pursuant to s. 721.08(2)(a) or  
138 (b) and no deed or other instrument conveying interest in  
139 Florida real property has been recorded or delivered to the  
140 purchaser, the tax must be paid to the department on or before  
141 the 20th day of the month following the month in which the funds  
142 are available for release from escrow unless the funds have been  
143 refunded to the purchaser.

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

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146       (11) The documentary stamp tax imposed by this section  
147 applies to a deed, instrument, or writing that transfers any  
148 interest in real property pursuant to a short sale, as defined  
149 in this subsection. The taxable consideration for a short sale  
150 transfer does not include unpaid indebtedness that is forgiven  
151 or released by a mortgagee holding a mortgage on the grantor's  
152 interest in the property. A short sale is a purchase and sale of  
153 real property in which:

154       (a) The grantor's interest in the real property is  
155 encumbered by a mortgage or mortgages securing indebtedness in  
156 an aggregate amount greater than the purchase price paid by the  
157 grantee;

158       (b) A mortgagee releases the real property from its  
159 mortgage in exchange for a partial payment of less than all of  
160 the outstanding mortgage indebtedness owing to the releasing  
161 mortgagee;

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

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

166       Section 2. The Department of Revenue may adopt rules to  
167 specify criteria indicating that a purported short sale is not  
168 an arm's length transaction.

169       Section 3. This act shall take effect July 1, 2009.