

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1584

INTRODUCER: Senator Gruters

SUBJECT: Taxation of Real Property Platform Transactions

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1584 provides that if a real property platform, as defined in the bill, purchases residential property and sells the same property within 180 days, documentary stamp taxes are assessed as follows:

- If the subsequent sale price is greater than the initial purchase price, and the difference in price between the initial purchase and subsequent sale **does not exceed** 10 percent of the initial purchase price, documentary stamp taxes are assessed only on the difference between the two prices.
- If the subsequent sale price is greater than the initial purchase price, and the difference in price between the initial purchase and subsequent sale **exceeds** 10 percent of the initial purchase price, documentary stamp taxes are assessed on the entire subsequent sale price.
- If the subsequent sale price is less than or equal to the initial purchase price, documentary stamp taxes are not assessed.

The Revenue Estimating Conference has not reviewed this bill.

The bill takes effect July 1, 2021.

II. Present Situation:

Documentary Stamp Tax

Chapter 201, F.S., levies an excise tax (called the documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the provisions of that chapter,¹ including provisions governing the collection of documentary stamp

¹ Section 201.11, F.S.

taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

The Department of Revenue classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.² The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.³ The second tax rate is 35 cents per each \$100 of consideration, capped at \$2,450, for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁴

After certain required payments on debt service on bonds, documentary stamp taxes are deposited into various trust funds⁵ including the Land Acquisition Trust Fund, State Transportation Trust Fund, Grants and Donations Trust Fund, and the State Housing Trust Fund. All documentary stamp tax revenues, except those which are transferred to the Land Acquisition Trust Fund in compliance with the Florida Constitution, are subject to an 8 percent service charge,⁶ which is transferred to the General Revenue Fund.⁷ Additionally, the Department of Revenue is permitted to deduct the amount necessary to pay for the cost it incurs in collecting the revenues.

Miami-Dade County is authorized to charge a local surtax on documents except for those involving the sale or transfer of a single family home.⁸ The surtax must be used to fund local affordable housing plans. In Miami-Dade County the documentary stamp tax is 60 cents on each \$100, paid to the state, and a 45 cent per \$100 surtax on transactions other than those involving single family homes, paid to Miami-Dade County.

Real Property Platforms

“PropTech,” “property technology,” and “real estate technology” are emerging terms used to describe the application of information technology to real estate markets. This subset of financial technology aims to streamline transactions and eliminate paperwork for consumers. The umbrella terms might include 3d modeling spaces, market data collection, crowdfunding of real estate projects, and shared economy businesses such as Airbnb.⁹

Real estate platforms, one form of property technology, enable buyers and sellers to interact throughout the process of a real estate transaction without the need for physical presence. A real property platform might allow a seller to run a virtual open house, communicate with potential

² Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, at 77 (2020) available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited March 29, 2021).

³ *Id.* See also s. 201.02(1), F.S.

⁴ *Id.*

⁵ Section 201.15, F.S.

⁶ Section 201.15, F.S.

⁷ Section 215.20, F.S.

⁸ Section 201.031, F.S.

⁹ See Jeff Pilch, *Proptech for the Real Estate Investor*, Motley Fool, Feb 04, 2021, available at <https://www.fool.com/millionacres/real-estate-basics/real-estate-terms/proptech-for-the-real-estate-investor/> (last visited March 25, 2021)

buyers, negotiate the sale price, and execute a sale, including producing required documents, all within a website or application.

The four biggest companies in this area, Compass, Opendoor, Redfin and Zillow, have a combined value of \$23 billion.¹⁰ Some property technology companies like these act as “instant buyers,” where they will make a cash offer to sellers immediately after a house has been listed for sale. These companies use data analytics and algorithms to appraise homes automatically and make an official offer on a house within hours of listing. If the offer is accepted, the company will hold the house while the original seller moves, and then sell the house on their platform.¹¹

One motivation for utilizing these systems is reducing fees associated with real estate transactions. In 2019, homeowners traded property worth \$1.5 trillion, and paid \$75 billion in transaction costs, including brokers’ fees between 5 and 6 percent of each transaction, taxes, and mortgage fees.¹² Real property platforms may help reduce brokers’ costs by allowing would-be buyers to browse the market in real time and without going through an agent. Real property platforms also charge fees, but offer a competitive alternative to the traditional real estate market.

III. Effect of Proposed Changes:

The bill amends s. 201.02, F.S., first defining the term “real property platform” to include a company operating an internet website or application which:

- Disseminates real property transactions by enabling consumers to purchase, sell, or rent residential property;
- Facilitates real property transactions by enabling consumers to purchase, sell, or rent residential property; and
- Purchases and assumes title itself, or through an affiliate, to residential property without taking residence of the property, with the intent to sell the property to a third party.

The bill provides that if a real property platform purchases residential property and sell the residential property within 180 calendar days following the initial purchase, documentary stamp taxes are assessed as follows:

- If the subsequent sale price is greater than the initial purchase price, and the difference in price between the initial purchase and subsequent sale **does not exceed** 10 percent of the initial purchase price, documentary stamp taxes shall be assessed only on the difference between the two prices.
- If the subsequent sale price is greater than the initial purchase price, and the difference in price between the initial purchase and subsequent sale **exceeds** 10 percent of the initial purchase price, documentary stamp taxes shall be assessed on the entire subsequent sale price.
- If the subsequent sale price is less than or equal to the initial purchase price, documentary stamp taxes shall not be assessed.

¹⁰ *Technology is Poised to Upend America’s Property Market*, The Economist, Feb 15, 2020 (available at <https://www.economist.com/finance-and-economics/2020/02/15/technology-is-poised-to-upend-americas-property-market>, last accessed March 26, 2021).

¹¹ *Id.*

¹² *Id.*

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact, which for Fiscal Year 2020-2021, is forecast at \$2.2 million.¹³

A county that assess a local documentary stamp surtax authorized by s. 201.031, F.S., (i.e., Miami-Dade County) may realize a reduction in local surtax revenues as a result of the bill. If the amount of tax revenue lost due to these effects is determined to exceed \$2.2 million in the aggregate, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed this bill.

¹³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021). Based on the Florida Demographic Estimating Conference's Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

B. Private Sector Impact:

Real property platform providers will see the positive fiscal impact of new exemptions from the documentary stamp tax applicable to certain real estate transactions.

C. Government Sector Impact:

The state government will face a negative fiscal impact associated with granting exemptions from the documentary stamp tax for certain real estate transactions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill may provide for a situation wherein a property is sold once every 180 days in order to indefinitely maintain the exemption on paying full documentary stamp taxes.

VIII. Statutes Affected:

This bill substantially amends section 201.02 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.