

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 Finance and Tax

BILL: CS/SB 1584

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Taxation of Real Property Platform Transactions

DATE: April 13, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1584 provides a documentary stamp tax discount on a document conveying or vesting an interest in a single-family residence or condominium from a real property platform or an affiliated group of corporations of the real property platform to an unrelated subsequent purchaser, if the real property platform or the affiliated group:

- Sells the property within 180 calendar days after it acquired the property and for not more than 110 percent of the price it paid; and
- Does not use the property as a home, residence, sleeping place, or dwelling unit while it owns the property, except under a short-term seller holdover arrangement.

The documentary stamp tax on such document would be assessed only on the difference between the price paid by the subsequent purchaser and the price paid by the real property platform or the affiliated group of corporations.

The Revenue Estimating Conference has reviewed language substantively identical to CS/SB 1584 and determined that the bill will reduce state revenues by \$200,000, beginning in Fiscal Year 2021-2022, and at least \$200,000 every year thereafter.

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

The DOR 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 DOR 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

¹ Section 201.11, F.S.

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 April 9, 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.

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 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., defining the term “real property platform” to include a publicly-traded corporation operating an Internet website or application that:

- Disseminates residential property information to consumers through the website or application; and
- Facilitates real property transactions to enable consumers to purchase and sell residential property.

“Affiliated group of corporations” is defined to mean two or more corporations which constitute an affiliated group of corporations as defined in s. 1504(a) of the Internal Revenue Code, regardless of whether such group elects to file a consolidated return for Florida corporate income tax purposes.

The bill provides that when a real property platform or an affiliated group of corporations of the real property platform receives a conveyance or vested interest in (purchases) a residential

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 April 9, 2021)

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 April 9, 2021).

¹¹ *Id.*

¹² *Id.*

property and subsequently sells the same interest in the property in an arm's length transaction to an unrelated subsequent purchaser, documentary stamp taxes are only imposed on the difference between the sale price and purchase price if the real property platform:

- Sells a single-unit residential property classified as a single family or condominium;
- Sells the property within 180 calendar days immediately following the original purchase;
- Does not use the property as a home, residence, sleeping place, or dwelling unit other than to allow a short-term seller holdover arrangement incidental to the sale of the residential property; and
- Receives not more than 110 percent of the original purchase price for the subsequent sale.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has reviewed language substantively identical to CS/SB 1584 and determined that the bill will reduce state revenues by \$200,000 beginning in Fiscal Year 2021-2022, and by at least \$200,000 every year thereafter.¹³

¹³ Revenue Estimating Conference analysis of proposed amendment to HB 623, March 19, 2021, *available at*: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/pdf/page205-210.pdf> (last accessed April 9, 2021).

B. Private Sector Impact:

Real property platform providers or their affiliated groups, or purchasers of residential property from such platforms, will benefit from reduced documentary stamp taxes owed on certain real estate transactions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The DOR noted that because there is not a requirement for real property platforms to register with the DOR as a dealer or through some other identification or registration, there may be issues with verifying if real property is purchased and sold by a real property platform.¹⁴
- The bill refers to an affiliated group of corporations of a real property platform. If the intent is to apply to another member of an affiliated group of corporations of which the real property platform is a member (applying to property interests bought and sold by any member of the group rather than the group as a whole), then technical changes to lines 33-34, 38-39, 41-42, 43-44, 53, and 64 may be needed to clarify. Alternatively, the definition of “real property platform” could be amended to include any member of an affiliated group of corporations of which the real property platform is a member.

VIII. Statutes Affected:

This bill substantially amends section 201.02 of the Florida Statutes.

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

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

CS by Community Affairs on March 30, 2021:

The CS:

- Narrows the term “real property platform” to require it be a publically traded company;
- Provides that the tax exemption only applies to arm’s length deals for single dwelling units;
- Provides that the tax exemption applies to sales as well as other forms of property interest transfer; and
- Otherwise clarifies the exemption without changing the substantive effect of the bill.

¹⁴ Florida Dep’t of Revenue, *Agency Analysis of SB CS/1584*, 4, April 9, 2021 (on file with the Senate Committee on Finance and Tax).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
