

Real Estate Ownership: Illinois

EUGENE J.M. LEONE, SCOTT A. SCHONFELD, AND SINDHOORI NACKEERAN, PIRCHER, NICHOLS & MEEKS,
WITH PRACTICAL LAW REAL ESTATE

A Q&A guide to commercial real estate laws for owners and purchasers in Illinois. This Q&A addresses state laws and customs that impact the ownership and the purchase and sale of commercial real estate, including real property taxes, transfer taxes, instruments for transferring fee title, execution and recording requirements, necessary disclosures, title insurance matters, and risk of loss. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Real Estate Ownership: State Q&A Tool (<http://us.practicallaw.com/3-517-4022>)).

TYPES OF ESTATES AND TAXABLE REAL PROPERTY

1. When an estate in real property is conveyed, granted, or demised, is it deemed to be transferred as an absolute fee simple estate?

When real property is conveyed, granted, or demised, it is deemed to be transferred as a fee simple estate unless express words limit the grant, conveyance, or devise to a lesser estate (765 Ill. Comp. Stat. 5/13).

2. Is there specific language which must appear in a deed to convey an absolute fee simple estate?

No specific language is required to convey an absolute fee simple estate. Any deed that is substantially in the form of the general warranty deed provided in Chapter 765, Section 5/9 of the Illinois Compiled Statutes is deemed a transfer in fee simple absolute.

3. What other freehold estates are permitted? Briefly describe each.

In Illinois, in addition to a fee simple absolute, the following freehold estates are permitted:

- **Life estates.** This estate is measured by the life or lives of one or more persons. On the expiration of the life estate, the fee interest passes either to a third party or, if no third party is designated, reverts to the grantor.
- **Estates for years.** This estate is for a fixed amount of time and may be transferred.

(765 Ill. Comp. Stat. 5/3.)

Fee tail estates are not permitted in Illinois. Any conveyance indicated to be a fee tail is deemed to be a fee simple absolute. (765 Ill. Comp. Stat. 5/6.)

REAL PROPERTY TAXES

4. In relation to real property taxes, please describe:

- The kind of property that is taxable as real property.
- Any kind of real property that is exempt from real property taxes.
- The current rate and nature of the taxes (for example, assessed value or school tax).
- The payment and collection procedures.

PROPERTY TREATED AS REAL PROPERTY

Property subject to taxation as real property includes:

- Land.
- Permanent fixtures, which include:
 - buildings;
 - structures; and
 - improvements.
- Minerals, including:
 - oil, and the right to remove it;
 - gas, and the right to remove it; and
 - coal.

(35 Ill. Comp. Stat. 200/1-130.)



EXEMPTIONS

Chapter 35, Sections 200/15-5 to 200/15-185 of the Illinois Compiled Statutes exempts multiple kinds of real property from property taxes, including but not limited to:

- State property.
- Property owned by local government units and school districts.
- Property used exclusively for:
 - horticultural and agricultural societies;
 - schools;
 - cemeteries; or
 - charitable purposes.

RATE AND NATURE OF TAXES

Tax rates include multiple jurisdictional components and also vary based on the presence of various public services including school districts, libraries, and special service areas (35 Ill. Comp. Stat. 200/9-145 to 200/9-255).

The tax owed for real property is calculated by multiplying:

- The equalized assessed value of the property (less any homestead exemptions).
- The aggregate rate for the tax code area in which the property lies.

The county clerk divides the county into tax code areas, in which all property is subject to the same combination of tax rates.

For more information see Illinois Department of Revenue: Understanding Your Property Tax Bill.

PAYMENT AND COLLECTION

Taxes are payable in two installments each year, due by specific dates set by the county. Taxes are paid in arrears for the previous year. Delinquent taxes are a lien on the real property and are subject to a penalty of 1.5% per month. (35 Ill. Comp. Stat. 200/21-15.)

INSTRUMENTS AND EXECUTION REQUIREMENTS

5. What deeds (or other instruments) are used to convey fee title and which is most commonly used? Briefly describe each.

In Illinois, fee title is typically conveyed by:

- **General warranty deeds.** The general warranty deed provides the grantee with the broadest protection for claims against title and is most commonly used in residential transactions. The general warranty deed warrants that:
 - the grantor was the lawful owner of an indefeasible estate in fee simple;
 - the grantor has good right and full power to convey the estate;
 - the estate is free from all encumbrances; and
 - the grantor will defend the grantee's title from claims of third parties.

(765 Ill. Comp. Stat. 5/8 and 5/9.)

- **Special warranty deeds.** The special warranty deed provides the grantee with certain limited warranties and covenants and is most commonly used in commercial transactions. A special warranty deed may warrant the grantor's clear fee title subject to certain specified exceptions and encumbrances.
- **Quitclaim deeds.** A quitclaim deed does not contain any covenants of title. The grantor simply conveys whatever interest the grantor has. (765 Ill. Comp. Stat. 5/10.)

6. Are there any specific state or local recording requirements necessary to record a deed? In particular, please specify if:

- Specific officers must sign for a corporation or other entity.
- Specific language is required to evidence the authority of a signatory for a corporation or other entity.
- A certificate of authority to do business in your state is required if the grantee on the deed is a foreign company.
- The corporation's seal is required on the signature page.
- There are specific margins or headings required for the deed.
- A cover page is required for recording.
- There are any other requirements.

OFFICERS

In Illinois, there is no requirement that a specific officer sign a deed on behalf of a corporation.

LANGUAGE FOR SIGNATURE BLOCK

No specific language is required on the signature page of the deed. However, the signature block should identify:

- The person signing.
- The capacity of the signatory.

AUTHORIZATION TO DO BUSINESS

A certificate of authority to do business in Illinois is not required to record a deed.

CORPORATE SEAL

No corporate seal is required (805 Ill. Comp. Stat. 5/3.10(c)).

MARGINS OR HEADINGS

Each recorded instrument must have a blank space of 3.5 inches by 3.5 inches on the top right corner of its first page (765 Ill. Comp. Stat. 5/9 to 5/11).

COVER PAGE

No cover page is required.

OTHER REQUIREMENTS

Generally, conveyance instruments must:

- Be in writing and signed by the grantor (765 Ill. Comp. Stat. 5/1).
- Include the names of the grantor and grantee (see 765 Ill. Comp. Stat. 5/9 and 5/10).
- Be recorded in the county in which the real estate is located (765 Ill. Comp. Stat. 5/28).

- Contain with reasonable certainty a description of the property being conveyed (765 Ill. Comp. Stat. 5/35c).
- Be accompanied by evidence of payment of transfer taxes or a statement of exemption (35 Ill. Comp. Stat. 200/31-25).

7. Provide the statutory form of acknowledgment for:

- An individual.
- A corporation.
- A limited liability company.
- A limited partnership.
- A trustee.

Chapter 5, Section 312/6-105 of the Illinois Compiled Statutes provides short statutory forms of acknowledgment. However, they are not exclusive and do not preclude the use of other forms.

INDIVIDUAL

STATE OF [STATE])
COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME].

[SEAL] _____
Notary Public
My Commission Expires: [DATE]

CORPORATION

STATE OF [STATE])
COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME] as [SIGNATORY TITLE] of [CORPORATION NAME].

[SEAL] _____
Notary Public
My Commission Expires: [DATE]

LIMITED LIABILITY COMPANY

STATE OF [STATE])
COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME] as [SIGNATORY TITLE] of [LLC NAME].

[SEAL] _____
Notary Public
My Commission Expires: [DATE]

LIMITED PARTNERSHIP

STATE OF [STATE])
COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME] as [SIGNATORY TITLE] of [LIMITED PARTNERSHIP NAME].

[SEAL] _____
Notary Public
My Commission Expires: [DATE]

TRUSTEE

STATE OF [STATE])
COUNTY OF [COUNTY])

This instrument was acknowledged before me on [DATE] by [SIGNATORY NAME] as [SIGNATORY TITLE] of [NAME OF ENTITY].

[SEAL] _____
Notary Public
My Commission Expires: [DATE]

DISCLOSURES, NECESSARY FILINGS, AND TRANSFER TAXES

8. Must the ultimate (whether direct or indirect) beneficial owner of an entity that owns real property be publicly disclosed? Briefly describe what is required and in what circumstances.

In Illinois, the only information that must be publicly disclosed is the name and address of the entity or individual holding title to the real property (765 Ill. Comp. Stat. 5/35c).

9. When a corporation is the fee title owner of real property, must it record any documents to evidence a merger, conversion, or name change?

Documents evidencing a merger, conversion, or name change do not need to be filed in the real estate records. Title to property is not affected by a merger or conversion. (805 Ill. Comp. Stat. 5/11.50 and 120/6.)

10. In connection with state and local transfer, stamp or similar taxes, and direct transfers of real property:

- Describe any taxes which apply when fee title ownership is directly transferred.
- What transfer tax returns (or other documents) must be filed for direct transfers of real property?
- What is the timing for filing the returns and paying the transfer taxes on direct transfers?
- Is there any type of real property or transaction that is exempt from a mortgage recording tax (or similar tax)?
- Are transfer taxes customarily paid by the purchaser or the seller in a direct transfer of real property?

APPLICABLE TAXES FOR DIRECT TRANSFERS

Transfer taxes are \$0.50 for each \$500 of value or fraction of it. Counties and municipalities impose transfer taxes at different rates. (35 Ill. Comp. Stat. 200/31-10 and 200/31-65.)

There are multiple exemptions to the transfer tax under state, county, and municipal statutes. Commonly exempted property includes:

- Property acquired from or by any exclusively charitable, religious, or educational organization.
- Property acquired by the mortgage holder in a foreclosure proceeding.

(See 35 Ill. Comp. Stat. 200/31-45.)

RETURNS

When a transferred deed is recorded, it must be accompanied by a transfer tax declaration. Transfer tax declarations are prescribed by the state, county, and municipality.

The transfer tax declaration form for the state is available on the Illinois Department of Revenue's website.

Counsel should check counties' and municipalities' websites for their transfer tax declaration forms.

FILING AND PAYMENT DEADLINES

The county recorder collects transfer taxes through the sale of revenue stamps (35 Ill. Comp. Stat. 200/31-15). A transferred deed is accepted for filing only if the proper stamps are affixed to it (35 Ill. Comp. Stat. 200/31-20).

The Illinois Department of Revenue conducts random investigations into unpaid taxes and the county's State's Attorney may prosecute and collect them (35 Ill. Comp. Stat. 200/31-60).

CUSTOM

The parties to the transaction typically contract to determine who will pay the transfer taxes.

11. In connection with state and local transfer, stamp or similar taxes, and indirect transfers of ownership interests in real property:

- Does an indirect transfer of real property ownership interests trigger transfer taxes? For example, would the transfer of corporate or membership interests of an owner of real property trigger transfer taxes?
- What transfer tax returns (or other documents) must be filed for indirect transfers of real property ownership interests?
- What is the timing for filing the returns and paying the transfer taxes on indirect transfers?
- Are transfer taxes customarily paid by the purchaser or the seller in an indirect transfer of real property ownership interests?

APPLICABLE TAXES FOR INDIRECT TRANSFERS

Transfer taxes are triggered by the transfer of more than 50% ownership interest in a real estate entity (35 Ill. Comp. Stat. 200/31-5 and 200/31-10).

RETURNS

See Question 10: Returns.

FILING AND PAYMENT DEADLINES

See Question 10: Filing and Payment Deadlines.

CUSTOM

See Question 10: Custom.

RECORDING INTERESTS AND TITLE INSURANCE

12. Where are ownership interests recorded and how are they indexed?

In Illinois, ownership interests in real property are recorded in the county recorder office where the property is located (765 Ill. Comp. Stat. 5/28). Properties are indexed by location and by their property identification number.

13. Do title insurance companies or attorneys typically conduct title searches?

Title insurance companies typically conduct title searches in Illinois.

14. What form of title assurance is available to a purchaser? For example, is an abstract of title, a title insurance policy, or a title opinion more common?

The most commonly used form of title assurance in Illinois is an owner's policy of title insurance.

15. Are title insurance premiums or service charges for owners' title insurance policies regulated? Is the cost of title insurance negotiable within a specified range of rates? Are there any discounts available for reissued policies?

Title insurance premiums are not regulated in Illinois (215 Ill. Comp. Stat. 155/19). Title insurance premiums and their related costs are freely negotiable.

16. List the title endorsements available for an owner's title insurance policy for non-residential property.

There are many endorsements for American Land Title Association (ALTA) title insurance policies issued in Illinois. These endorsements include:

- ALTA 3.1 (Zoning).
- ALTA 6 (Deletion of Arbitration).
- ALTA 17 (Utility Access).
- ALTA 18 (Tax Parcel).
- ALTA 19 (Contiguity).
- ALTA 26 (Subdivision).

RISK OF LOSS

17. Is the risk of loss during the contract period typically on the seller or on the purchaser if the contract is silent?

The risk of loss during the contract period is typically on the purchaser if the contract is silent.

REAL PROPERTY INVESTMENT VEHICLES

18. What are the most common forms of investment vehicle for real property and what are the most common entities used?

Limited liability companies are the most common form of investment vehicle for real property in Illinois, although other forms are also used.

19. Are real estate investment trusts (REITs) or similar entities currently permitted? If so, are they common?

Real estate investment trusts (REITs) are permitted and common in Illinois.

REGULATION AND TAXATION

20. Is there significant regulation and taxation of real property locally? Is there significant variation in the regulation and taxation?

There is significant variation in local regulation and taxation of real property. Assessments vary based on multiple factors including the nature of the property (for example, residential or commercial), its location, and use.

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