



ISSUES IN OWNERSHIP OF REAL ESTATE

CAYMAN ISLANDS

Walkers

Sonia Starvis

Walkers

Walker House, Mary Street, George Town, Grand Cayman, Cayman Islands, British West Indies
1 345 914 4282

Sonia.starvis@walkersglobal.com

www.walkersglobal.com

- 1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?**

Fee simple ownership of real property is permitted. Other forms of ownership are leasehold title and strata titles.

- 2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?**

There are prescribed forms of transfer which must be used. For transfers of freehold property, transfers of land are used and for transfers of leasehold property, transfers of lease are used.

- 3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?**

Title to real estate is evidenced by registration at the Cayman Islands Land Registry where parcel files are open to inspection. Registration is of title rather than of transactions but some information on previous transactions will be available in the parcel files kept for each title.

- 4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?**

Where a property is registered with absolute private title, there is a state guarantee whereby any proprietor, who suffers loss arising from an error in the register which cannot be rectified, is entitled to compensation from the Cayman Islands Government. Title insurance is available, however, it is expensive and it is not commonly used.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

The structures most commonly used are local limited liability companies, foreign companies and trust arrangements. A foreign company wishing to purchase or lease real estate in the Cayman Islands must be registered at the Companies Registry as a foreign company. Any foreign company or Cayman company which is foreign controlled wishing to own income producing real estate investment must be licenced under the Trade and Business Licensing Law and the Local Companies (Control) Law. REIT's and real estate derivatives from Cayman Islands real estate are not generally available nor commonly used.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

The Cayman Islands has not adopted and, as far as we are aware, is not considering adopting legislation permitting the creation of real estate investment trusts (REIT's) or similar entities. However, trustees (corporate and individual) are permitted to be registered as a proprietor of land, a lease or a charge of immoveable property. Foreign corporate trustees must, however, be registered as a foreign company at Companies Registry before they can be registered as a proprietor of land, lease or charge in the Cayman Islands.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

There are no taxes payable when you sell real estate in the Cayman Islands. However, stamp duty is payable (subject to certain exemptions) when you buy, lease or mortgage real estate. Stamp duty is payable on the transfer of land or strata title, the transfer or grant of a new lease, any agreement or memorandum of agreement for the purchase of land or strata title and the assignment of any rights under such an agreement and a debenture or mortgage of land.

Generally, the stamp duty in relation to the acquisition of freehold or leasehold land is paid by the buyer and for the grant of a lease, by the tenant. This, however, is negotiable between the parties. The current rates of stamp duty payable are set out below:

Stamp duty is payable on an agreement or memorandum of agreement for the purchase of land or strata title. Such agreement may be stamped with a minimal fixed duty of CI\$100 or with ad valorem duty, depending on whether the agreement contains or grants a right of possession. If the agreement confers or does not specifically prevent any right of occupation ad valorem duty is payable. Where full ad valorem duty is paid on the agreement no additional duty will be payable on the transfer, provided the transfer has been executed in conformity with the agreement and relates to the same real estate as the agreement. If there is an assignment of any rights of an agreement relating to the purchase of land or strata title, depending upon the terms of the assignment, either varying, fixed or ad valorem duties are payable.

The current rates of stamp duty payable on a transfer of land or lease vary from 0% to 7.5% depending on whether the buyer is a Caymanian citizen and the location of the real estate.

Normally the price paid for the real estate is accepted as the market value but the stamp duty authorities are entitled to (and sometimes do) carry out their own valuation.

There is an equivalent duty payable on the transfer of shares in a corporation owning real estate in the Cayman Islands where a change in beneficial ownership is involved. This is called share transfer tax and is payable on the issue or transfer of equity capital in a land holding company, as referred to in the Land Holding Companies Share Transfer Tax Law (2007 Revision). There are a few exemptions, which include transfers for natural love and affection between certain family members, transfers to successors entitled under an estate and transfers which do not bring about a change in beneficial ownership. However, all stamp duty exemptions are at the discretion of the Financial Secretary of the Cayman Islands.

The current rates of stamp duty payable on a lease agreement or a lease are (i) 5% of the aggregate rent if the term is less than one year (ii) 5% of the average annual rent if the term does not exceed five years (iii) 10% of the average annual rent if the term exceeds five years but does not exceed ten years (iv) 20% of the average annual rent if the term exceeds ten years and (v) the same duty as on a sale based on the full market value of the real estate if the term exceeds thirty years.

Stamp duty is payable on any mortgage (legal or equitable) or charge of immovable property. The current rate of stamp duty is either 1% or 1.5% depending on the sum secured. Stamp duty at the rate of 1% is payable if the sum secured is less than CI\$300,000.00 and where the sum secured is more than CI\$300,000.00, stamp duty at the rate of 1.5% of the sum secured will be payable.

8. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?

As stated above, a transfer tax is payable on the value of any transfer or issue of equity capital in a land holding company pursuant to the Land Holding Companies Share Transfer Tax Law (2007 Revision). The tax is paid on the value of the shares, not the consideration paid for the shares. The obligation to pay the tax falls upon the land holding corporation. There are a few exemptions, however, all exemptions are at the discretion of the Financial Secretary of the Cayman Islands.

9. How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?

There are no political subdivisions in the Cayman Islands and therefore no variations of real estate law.

As stated above, the current rates of stamp duty payable on a transfer of land or lease vary from 0% to 7.5%, depending on whether the buyer is a Caymanian citizen and the location of the real estate.

The charge to duty on a conveyance or transfer of immovable property located in West Bay, Block 5C (parcels with water frontage only, but including any parcel subsequently derived from another parcel with water frontage existing at July 1, 2006), 5D, 10A, 10E, 11B, 11C, 11D, 12C (parcels with water frontage only, but including any parcel subsequently derived from another parcel with water frontage existing at July 1, 2006), 12D, 12E and 17A, George Town, Block 13B, 13C, 13E, 13EH (parcels with road frontage on west Bay Road, Eastern Avenue and North

Church Street), 13D, 14BG, 14BH, 14BJ, 14CJ, OPY and 18A is currently 7.5% of the consideration.

Except as provided for above, the charge to duty on a conveyance or transfer of immovable property is (i) 4% of the consideration, if the transferee is a Caymanian, (ii) 2% of the consideration if the transferee is Caymanian and (a) the consideration exceeds CI\$200,000 but does not exceed CI\$300,000 in the case of land with a building or (b) in the case of land without a building, the consideration exceeds CI\$50,000 but does not exceed CI\$75,000, (iii) 0% if the transferee is Caymanian and (a) in the case of land with a building, the consideration is CI\$200,000 or less or (b) in the case of land without a building, the consideration is CI\$50,000 or less and (iv) 6% of the consideration, in any other case.

10. Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?

No.