ISSUES IN OWNERSHIP OF REAL ESTATE

U.S.A. - ALABAMA
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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?

Yes, fee simple absolute property ownership is permitted in Alabama.

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

Real property is conveyed in Alabama pursuant to one of three types of deeds: general warranty deed, statutory warranty deed or quitclaim deed. The general warranty deed provides for a transfer of property with a broad warranty of title by the seller. The statutory warranty deed is utilized pursuant to Alabama Code § 35-4-271 to convey real property with a limited warranty of title. The quitclaim deed is used to convey real property without any warranties of title.

Alabama law (including specifically Alabama Code § 35-4-20) requires that instruments conveying real estate adhere to certain formalities. The instrument must (i) contain the name and address of the individual preparer (not just the name of the law firm) of the instrument pursuant to Alabama Code § 35-4-110 (though failure to include this information does not
affect the instrument's validity pursuant to the cited code section); (ii) be executed and witnessed or notarized as set out below; (iii) be delivered to the grantee (with evidence of grantor's present intent to divest title that is rebuttably presumed upon physical delivery); (iv) contain an adequate legal description of the land; and (v) identify the grantee with certainty. The state and county in which the subject real estate is located should be stated in the upper left hand corner of the instrument, while the state and county of execution must be stated above the notary acknowledgment. Any conveyance of land or interest therein by an individual grantor must contain a recitation of the grantor’s marital status. The spouse of an individual grantor must sign the instrument of conveyance only if the property is the grantor’s homestead. If not, the preparer should add a recital that the property is not the homestead of the grantor. If part of the consideration for the conveyance is paid out of the proceeds of a mortgage loan closed simultaneously, a statement to that effect should be included in the deed in order to procure the appropriate deed tax credit described in question 7 below.

In addition, certain Alabama Acts not yet codified (such as Alabama Act Nos. 80-450 and 80-610) have required (and subsequently made it common practice) to include the name and address of the grantee for purposes of receiving the property's ad valorem tax bill.

One witness is required for any conveyance, unless the grantor cannot write, in which case two witnesses are required. A notary acknowledgment serves as a witness and also makes the document self-proving when recorded. Purported execution in the name of a corporation by certain officers, including the president, vice-president or secretary, constitutes prima facie evidence of due authorization. No corporate seal is required, but the use of a corporate seal dispenses with the need for proof of due authorization, subject to rebuttal.

An Alabama statutory acknowledgment form should be used if the instrument of conveyance is notarized. If the instrument is to be acknowledged outside of Alabama, the words “and official seal” should be inserted after the word “hand” in the last line and the notary should affix his or her seal in order for such acknowledgment to be self-proving. All deeds should be recorded in the county in which the real property is situated and should include the appropriate address for tax notices and the name and address of the person to whom the deed should be returned after recording.

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

Real property title searches in Alabama are typically conducted by means of a grantor/grantee search. A title search is generally conducted by an abstractor, either working for a lawyer or a title insurance company. The customary time period of ownership that is searched in Alabama is 60 years.
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?**

Title insurance is available in Alabama. A title insurance policy on real estate in Alabama must be issued by a person or agent who is domiciled in, or is otherwise a bona fide resident of and resides in Alabama, or is a partnership, association, corporation or other legal entity properly organized or existing under the laws of Alabama, and individual attorneys may act as title insurance agents in Alabama. Title companies are required to file their rates for title insurance premiums and endorsements with the commissioner of insurance. Premium rates charged by title insurance companies are regulated by the commissioner of insurance. Extended coverage endorsements to title insurance policies issued in Alabama are typically available from Alabama title insurers. Most of the standard title policy endorsements are available in Alabama.

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?**

Alabama limited liability companies, Alabama corporations and Alabama limited partnerships are the most common forms of entities employed to own investment real estate. Foreign entities may also be used subject to qualification and registration to do business in Alabama prior to contracting for and receipt of conveyance.

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

Yes, Alabama has adopted the Alabama Real Estate Investment Trust Act, codified as Sections 10-13-1 et seq. of the Alabama Code. The Alabama Real Estate Investment Trust Act sets forth the requirements for forming and operating a real estate investment trust under Alabama law. Under Section 10-13-2, a real estate investment trust is:

> an unincorporated trust or association in which property is acquired, held, managed, administered, controlled, invested, or disposed of for the benefit and profit of any person who may become shareholder or an entity that otherwise complies with the provisions of 26 U.S.C. Sections 856 to 858, inclusive, of the U.S Internal Revenue Code, and the rulings and regulations adopted thereunder.

A real estate investment trust may not do business in the state until it complies with the Alabama Real Estate Investment Trust Act.

In addition, a foreign real estate investment trust must qualify to do business in Alabama prior to transacting business in Alabama by complying with the Alabama Real Estate Investment Trust Act and Sections 10-2B-15 et seq. of the Alabama Code. The failure to qualify could prevent a foreign real estate investment trust from maintaining any legal proceeding in the courts of Alabama, as all agreements entered into by a foreign real estate investment trust are void when sued upon by the foreign real estate investment trust or
anyone claiming through it. Furthermore, such foreign real estate investment trust may not
cure the failure to qualify and then enforce agreements entered into prior to qualifying.

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

A deed tax is due upon the recording of a deed in the amount of fifty cents ($0.50) per five
hundred dollars ($500) or a fraction thereof, based on the value of the property conveyed. A
mortgage tax is due upon the recording of a mortgage in the amount of fifteen cents ($0.15)
per one hundred dollars ($100) or a fraction thereof. Where a deed and mortgage are
recorded simultaneously, there is a credit against the deed tax for the amount on which the
mortgage tax is paid. Appropriate recitals should be included in the deed to take advantage
of the credit. For example, a deed should recite “$____________ of the purchase price of the
above-described property was financed with the proceeds of a mortgage loan closed
simultaneously herewith.” The deed tax is also applicable to leases and is computed based
on the future rentals discounted to present value in accordance with a schedule kept by the
probate judge. The tax is payable on lease assignments.

Additional per page recording fees are due upon recording, and rates are set by the Office of
the Judge of Probate in which the real property is situated.

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?

None as of this date.

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?

All real and personal property located in Alabama is subject to property taxes, unless
specifically exempted. The state millage rate on both real and personal property is limited by
the Alabama Constitution to 6.5 mills or $6.50 per $1,000 of assessed value. Counties, cities
and school districts may also impose property taxes and these local rates vary. The average
combined state and local millage rate is 43 mills.

The owner of real property and tangible personal property with situs in Alabama on October
1 of each year is assessed property taxes. Between October 1 and December 31, all taxable
property must be assessed by the tax assessor of the county in which the property is located.
Utility property, however, is assessed by the Alabama Department of Revenue. "Utility
property" is generally considered to be property of a taxpayer that has the essential
characteristics of a utility, including the power of eminent domain and federal and state
regulation of rates or tariffs. Alabama arrives at an assessed value for property based upon
four different classifications: (1) utility property is assessed at 30% of its appraised value; (2)
business property is assessed at 20% of its appraised value; (3) agricultural, forest and
residential property and historic buildings are assessed at 10% of appraised value; and (4)
private passenger autos and trucks are assessed at 15% of appraised value.
Major property tax exemptions include the following:

- **Inventory** – inventories of goods, wares and merchandise for sale are not subject to property tax. Inventories of raw materials for use as an ingredient or component part of a manufactured or compounded product are also exempt.

- **Pollution Control Equipment** – all equipment and materials purchased primarily for the control, reduction or elimination of air or water pollution are exempt.

- **Property used for “purposes purely charitable”** is exempt from Alabama property taxation. Note that even though an entity may be a 501(c)(3) exempt organization for federal taxation purposes, use of property in conformity with its 501(c)(3) purposes will not automatically qualify such entity for the “purposes purely charitable” exemption under Alabama state law.¹

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

No, except that the Alabama LLC statute requires initial members to be included in the articles of organization.

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