ISSUES IN OWNERSHIP OF REAL ESTATE

U.S.A. - KENTUCKY
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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 Kentucky.

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

   Ownership of real estate in Kentucky may be conveyed either by deed or will. KRS § 382.010 states that “the owner may convey any interest in real property not in the adverse possession of another; but no estate of inheritance or freehold, or for a term of more than one (1) year, in real property shall be conveyed, except by deed or will.” Kentucky does not have a statutory form of deed. Pursuant to KRS § 381.060, unless a different purpose appears by express words or necessary inference, all deeds are construed to convey fee simple title. It should also be noted that pursuant to KRS § 382.110 (1), for a conveyance of the title to real property to be effective against third parties who do not have actual notice of the conveyance, the deed must be recorded in the office of the county clerk of the county in which the property conveyed, or greater part thereof, is located.
3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

Conveyances of real property are properly recorded in the office of the county clerk of the county in which the real property (or greater portion thereof) is located. The most common method to search the ownership of real property is to conduct a title search by means of a grantor/grantee search. A title search may be conducted by an attorney; however, because the search process alone is not generally considered to be the practice of law, the title search is often conducted by an abstractor or a searcher working for a lawyer or a title company. The customary time period of ownership that is searched in Kentucky is 60 years. While the title search may be performed by a non-attorney, a title examination (whereby each document discovered in the title search is examined to determine the interest it creates and compliance under Kentucky law) is generally considered to be the practice of law and must always be performed by an attorney.

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 Kentucky. Title insurance is regulated by the Kentucky Office of Insurance, and the proposed rates of each insurer must be approved by that office pursuant to KRS § 304.22-020. The cost of obtaining title insurance varies based upon the amount of insurance to be obtained. Title opinions are used with less frequency now, especially in more developed areas of Kentucky.

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?

In Kentucky, the most common forms of entities used for investment in real estate include limited liability companies, limited partnerships, general partnerships and corporations, with limited liability companies being used with increasing frequency.

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

Although there is no specific REIT statute in Kentucky, the term “Real Estate Investment Trust” is included within the definition of “business trust” pursuant to KRS § 386.370, provided that the same is in compliance with the Internal Revenue Code of 1986, as amended. In Kentucky, a business trust may be established by written declaration for the purpose of acquiring, holding, or selling real property pursuant to KRS § 386.380.

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

In Kentucky, pursuant to KRS § 142.050, a transfer tax is imposed upon the grantor named in the deed at a rate of fifty cents ($0.50) for each five hundred dollars ($500) of value or fraction thereof, which value is declared in the deed and sworn to by both grantor and
grantee. This transfer tax is to be computed and collected by the county clerk as a prerequisite to the acceptance of the deed for recordation. Exemptions to transfer tax liability are detailed in KRS § 142.050 (7).

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?**

No transfer tax applies to the transfer of interests in an entity owning real estate; the transfer tax only applies when a deed is recorded.

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?**

The Kentucky transfer tax statute listed above applies uniformly in all counties in Kentucky and no other specific transfer taxes are levied upon the transfer of real estate at the local level. The state rate of ad valorem real property tax also applies uniformly. Local cities, counties, school districts, and other special taxing districts have varying rates of ad valorem taxes and fiscal years for which such taxes apply. Each political subdivision of Kentucky may adopt local laws governing the real property contained within its boundaries, so long as such local laws are not otherwise inconsistent with state or federal law.

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

No.