



## **2011 Bulletin 11** **Doc Stamps are Tricky**

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Doc Stamps are Tricky, and some transactions are taxable even though they wouldn't seem to be.

In these tight budget times, the Department of Revenue is more closely scrutinizing the public records to seek out unpaid Documentary Stamp Taxes and Intangible Taxes. One of our members recently got a lovely letter from the Department of Revenue asking why they hadn't paid doc stamps on the assignment of a bid. The agent had assumed that a bid is really just an assignment of the judgment rights and not an interest in real property, at least until the certificate of title is issued, so would not be taxable. The agent's analysis made perfect sense, but was unfortunately wrong! In the often illogical world of Florida taxation, Doc Stamps are due on the assignment of a successful bid in a foreclosure case. Fla. Admin. Code §12B-4.013(25)

There are a host of other, not always obvious, Doc Stamp traps for the unwary. For example:

- Doc Stamps are due on a deed in lieu. The tax is based on the full amount owed on the mortgage, including accrued interest PLUS any other consideration given. Fla. Admin. Code §12B-4.013(2)
- Transfers to a governmental entity under threat of condemnation are NOT subject to doc stamps, provided certain conditions are met. Fla. Admin. Code §12B-4.013(4)
- Assignments of Oil, Gas, & Mineral Rights and royalties are subject to tax, as are transfers of any interest in standing timber and pine stumps. Fla. Admin. Code §12B-4.013(7)
- Easements are considered an interest in real property and doc stamps are due. Fla. Admin. Code §12B-4.013(11)
- An Agreement for Deed is taxable on the full amount paid or to be paid over the life of the contract (unlike a mortgage, there is no discount for an interest factor). But if you have paid your taxes on the Agreement for Deed, no additional doc stamps are due when the final deed issued. Fla. Admin. Code §12B-4.013(14) In Florida, we treat an agreement for deed as both a deed and a mortgage back to the seller and in the event of non-payment it must be foreclosed through the courts like any other mortgage. Tax is then due on the release of the Agreement for Deed and release/reconveyance of the property based on the unpaid balance forgiven (just like a deed in lieu). Fla. Admin.

Code §12B-4.013(15). Doc Stamps are also due on any assignment of the agreement for deed to a third party. Fla. Admin. Code §12B-4.013(16).

- Even a gift of property can be subject to doc stamps, based on the unpaid balance of any mortgage encumbering the property. Fla. Admin. Code §12B-4.013(18)
- Assignments of a beneficial interest in a land trust are taxable. Fla. Admin. Code §12B-4.013(26). But further analysis is required where property is transferred to or from the beneficiaries of that trust and those transfers may or may not be taxable depending on other facts. See Fla. Admin. Code §12B-4.013(29)(a) & (b)
- A no consideration transfer of property to a trust (other than a land trust) is generally analyzed as a gift and taxed based on any outstanding mortgage balances. But if the grantor is also a beneficiary of the trust, the tax may be reduced by the proportion of the mortgage which still impacts the grantor/beneficiary. See the examples at Fla. Admin. Code §12B-4.013(29)(c). Where an existing trust is buying property from an unrelated party, the doc stamps are based on the purchase price.

These are just a few examples of the complexity of the rules governing doc stamps – and I’ve greatly oversimplified them and only addressed a handful of issues. As title agents, our customers expect us to understand and get the doc. stamp and intangible tax issues right. The answer is not always obvious and additional research is often required.

Here are some helpful references:

[Florida Administrative Code regarding Doc Stamps current through 9-18-11](#)  
[Florida Administrative Code regarding Intangible Taxes current through 9-18-11](#)  
The Florida Department of Revenue tax library <https://taxlaw.state.fl.us/>

And, as always, if you have questions or concerns, talk with your underwriter.