

Real Estate Ownership: New York

DANIEL BERMAN AND SETH NIEDERMAYER, KRAMER LEVIN NAFTALIS & FRANKEL LLP,
WITH PRACTICAL LAW REAL ESTATE

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A Q&A guide to commercial real estate laws for owners and purchasers in New York. 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).

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?

In New York, a grant or devise of real estate passes all the estate or interest of the grantor or testator unless the intent to pass a lesser estate or interest appears by either:

- The express terms of the grant or devise.
- Necessary implication from the instrument by which the grant or devise was made.

(N.Y. Real Prop. Law § 245.)

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

New York law does not require any specific language to appear in a deed to convey an absolute fee simple estate.

A covenant in the deed that the grantor “is seized of the said premises (as described in the deed) in fee simple, and has good right to convey the same” must be construed to mean that the grantor is the lawful owner of a good, absolute, and indefeasible estate in fee simple (N.Y. Real Prop. Law § 253).

While there is no specific conveyance language required under New York law, deeds in New York must include the statutory trust language required by N.Y. Lien Law § 13. The covenant is deemed to have been made if, instead of reciting the trust covenant in full, a statement substantially similar to “Subject to the trust fund provisions of Section Thirteen of the Lien Law” is contained in the deed (N.Y. Lien Law § 13).

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

The classification of permitted estates is governed by the New York Estates, Powers, and Trusts Law, which classifies estates in three separate categories according to:

- **Duration of the interest.** This includes estates transferred as:
 - fee simple absolute;
 - fee on condition;
 - fee on limitation;
 - estates for life;
 - estates for years;
 - estates from period to period;
 - estates at will; and
 - estates by sufferance.
- (N.Y. Est. Powers & Trusts Law § 6-1.1.)
- **Number of owners.** This includes estates by a single owner or by multiple owners, including joint tenancies, tenancies in common, and tenancies by the entirety (N.Y. Est. Powers & Trusts Law § 6-2.1).

- **Time of creation or enjoyment.** This includes future estates with:
 - interest left in the creator such as reversions, possibilities of reverter, and rights of reacquisition; and
 - remainder interests in favor of a person other than the creator.
- (N.Y. Est. Powers & Trusts Law § 6-3.2.)

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

In New York, all real property is subject to real property taxation, special ad valorem levies, and special assessments unless exempt by law (N.Y. Real Prop. Tax Law § 300). The following are some examples of what is considered “real property” for real property taxation:

- Land, including:
 - trees;
 - mines; and
 - minerals.
- Structures on, under, above, or affixed to the land.
- Buildings.
- Telephone, electric, and other lines, wires, poles, and supports owned by a telephone company.
- Mains, pipes, and tanks for conducting steam, heat, water, oil, electricity, or certain other properties, substances, or products.
- Boilers, ventilating apparatus, elevators, and plumbing.
- Heating, lighting, and power generating equipment, **excluding** certain movable machinery owned by a corporation that is used for trade or manufacture and subject to the New York State Franchise Tax.

(N.Y. Real Prop. Tax Law § 102(12).)

EXEMPTIONS

Exemptions from real property taxation are provided for in various state statutes. Exemptions can apply to certain types of land, including but not limited to:

- Public property.
- Certain government owned real property.
- Certain real property owned by non-profit organizations that is used exclusively for religious, educational, or charitable purposes.
- Partial exemptions for certain commercial, business, or industrial improvements.
- Various residential real property exemptions based on military service, age, disability, affordable housing status, or other factors.

(N.Y. Real Prop. Tax Law §§ 400 to 499-Ssss.)

Application forms for particular types of real property tax exemptions are published by the New York State Board of Real Property Services and are accessible at each local tax assessor’s office or online. Most exemption application forms can be obtained from the New York State Department of Taxation and Finance Property tax forms-Exemptions webpage.

There are specific deadlines for filing the applications for exemptions.

Procedures are available to review the denial of an application for exemption.

RATE AND NATURE OF TAXES

In New York, real property taxes are imposed by:

- Local municipalities, for example:
 - counties;
 - towns;
 - cities; and
 - villages.
- School districts.
- Special improvement or service districts.

(N.Y. Real Prop. Tax Law § 102(3).)

Tax rates are determined by the individual municipal governments and school districts and are specified as a tax rate per each \$1,000 of assessed value of the subject property.

To find out what taxes apply to a particular property, the taxpayer must determine:

- If the property is comprised of one or more tax parcels.
- Which municipalities and school districts impose taxes on the property.
- Whether there are any additional municipal taxes or other charges affecting the property, for example:
 - water;
 - sewer; or
 - trash collection.

Owners seeking to reduce their real property taxes can seek administrative and judicial review of:

- The assessed value of their property.
- The denial of any application for exemption.
- The imposition of tax.

(N.Y. Real Prop. Tax Law §§ 525, 720.)

Completion of the administrative review process is a prerequisite to seeking judicial review (N.Y. Real Prop. Tax Law § 706(2)).

Although the procedures for administrative and judicial review of assessments and taxes are standard throughout New York, deadlines for filing the necessary administrative complaint forms and commencing judicial review vary depending on the county and municipal tax district where the real property is located. For a list of all the counties in New York and the municipal taxing districts within each county, see the Office of Real Property Tax Services’ Municipal Profile.

PAYMENT AND COLLECTION

Real estate taxes are payable to the particular municipal taxing authority or school district that levies the tax. For example, real property located within a city is generally subject to city and county tax but no school tax, because the school district is generally operated by the city. Real property located in a village may be subject to village, town, county, and school taxes. Municipalities and school districts often enter into cooperative agreements for the collection of real estate taxes.

Deadlines for payment of real estate taxes vary according to the taxing district in which the property is located. Real estate taxes are payable when required by the applicable local taxing authority (see Question 20).

The taxes, once levied, become a lien on the real property to which they apply. Tax liens have priority over all other liens and encumbrances on the property, including mortgage liens (N.Y. Real Prop. Tax Law §§ 902 and 1132).

If the collecting officer fails to mail a tax statement, or the taxpayer does not receive one, it has no effect on the validity of the taxes or the accrual of interest on the unpaid tax (N.Y. Real Prop. Tax Law § 922(3)). Interest is added to any tax not paid by the due date at a rate equal to one twelfth of the rate specified by the Commissioner of Taxation and Finance, which is at least 12% per year (N.Y. Real Prop. Tax Law § 924-a).

If delinquent real property taxes are not paid within the statutory period allowed, the taxing authorities commence a tax foreclosure. A tax foreclosure in New York extinguishes the interests of:

- The owner.
- The mortgage lenders.
- The lessees.
- Other parties having interest in the real property.

In a tax foreclosure, the delinquent party should consult the taxing authorities for the applicable payment deadlines because, while some tax districts in New York foreclose under Article 11 of the New York Real Property Tax Law (Uniform Delinquent Tax Enforcement Act), that is not the only procedure available.

Taxing authorities are **not** required to show that the property owner has received a notice of tax foreclosure to satisfy due process requirements (*Kennedy v. Mossafa*, 759 N.Y.S.2d 429, 434 (N.Y. 2003)).

Mortgage lenders and others having an interest in real property who wish to receive notices of tax foreclosure may file a declaration of interest with the tax enforcing officer on a specified form. However, a filed declaration of interest is effective only for a period of ten years from the date of filing unless extended. (N.Y. Real Prop. Tax Law § 1126.)

While filing this declaration of interest places a higher burden on taxing authorities to provide notice to those who have filed a declaration, taxing authorities are not required to show that notice of a tax foreclosure was actually received by the party having an interest in the property. Therefore, monitoring the status of real property taxes is extremely important.

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.

Conveyances of real property in New York are generally made by deed. There are no implied covenants in New York deeds (N.Y. Real Prop. Law § 251).

Forms of deed commonly used in New York include the following:

- **Warranty deed.** A warranty deed that is intended to be a general warranty deed should contain, in addition to the usual phrase “does hereby grant and release,” the phrase “forever warrants title to said premises.” Generally, the following covenants are also expressly provided in a warranty deed:
 - the grantor is seized of the property when the deed is made and delivered, and that the grantor has the right to convey the property;
 - the property is free from all encumbrances or liens;
 - the grantee shall quietly enjoy the property;
 - the grantor will execute or procure any further necessary assurance of title to the property; and
 - the grantor will forever warrant title to the property.
- (N.Y. Real Prop. Law § 258.)
- **Bargain and sale deed with covenant against grantor’s acts.** This form of deed is effective to convey whatever interest the grantor owns in the subject property and contains a single covenant that the grantor has not done anything to encumber title to the property except as stated in the deed (N.Y. Real Prop. Law §§ 246 and 258).
- **Bargain and sale deed without covenant against grantor’s acts.** This form of deed is effective to convey whatever interest the grantor owns in the subject property and contains no covenants on the part of the grantor other than the covenant under N.Y. Lien Law § 13 (N.Y. Real Prop. Law §§ 246 and 258).
- **Quitclaim deed.** This form of deed is effective to convey whatever interest the grantor owns in the subject property and contains no covenants on the part of the grantor (N.Y. Real Prop. Law § 258).

Although their use is not mandatory, statutory forms of various types of deeds are set out in N.Y. Real Prop. Law § 258.

Other deeds are also used that are specific to the office or position of the grantor, including:

- **Executor’s deed.** An executor’s deed is similar to a bargain and sale deed with covenant against grantor’s acts, but the full amount of the consideration paid must be recited in an executor’s deed (N.Y. Real Prop. Law § 258).
- **Trustee’s deed.** A trustee’s deed is the same form as an executor’s deed but is executed by the trustee of an estate rather than an executor.
- **Referee’s deed in foreclosure.** A referee’s deed in foreclosure contains no covenants with respect to title, but recites the full consideration paid, describes the mortgage that was foreclosed, and describes the judgment of foreclosure and sale under which the deed was executed (N.Y. Real Prop. Law § 258).
- **Referee’s deed in partition.** A referee’s deed in partition contains no covenants with respect to title, but recites the full consideration paid and describes the judgment of partition under which the deed was executed (N.Y. Real Prop. Law § 258).

To protect the grantee against mechanics' liens filed for work performed before the conveyance, it is important to confirm by title search that no mechanics' lien has previously been filed. Additionally, deeds in New York must include the statutory trust language required by N.Y. Lien Law § 13. The covenant provided for in Section 13 is deemed to have been made if, instead of reciting the trust covenant in full, a statement in substantially the following form is contained in the deed: "subject to the trust fund provisions of Section Thirteen of the Lien Law" (N.Y. Lien Law § 13).

In addition to the deed, certain additional filings must accompany the deed for recording, including:

- Form RP-5217 (N.Y. Real Prop. Law § 333).
- Form TP-584 (N.Y. Tax Law § 1409).
- Any other transfer tax forms required by the local municipality.

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

New York has no statute requiring that deeds be executed by particular officers of a corporation or other entity.

LANGUAGE FOR SIGNATURE BLOCK

There is no particular form of signature block required by statute.

AUTHORIZATION TO DO BUSINESS

Foreign companies are not required to obtain and file a certificate of authority to do business before acquiring title to real property in New York. However, New York requires foreign entities "doing business" in New York to qualify to do business in New York. The New York Department of State does not give opinions on what activities constitute doing business in New York for qualification purposes.

While owning real property may or may not qualify as "doing business" in New York, most foreign companies acquiring real property in New York obtain a certificate of authority, typically required by lenders. Additionally, a foreign company that is not authorized to do business in New York can have its motion dismissed for failure to state a cause of action should it seek to begin an action in New York courts. (N.Y. Bus. Corp. Law § 1312(a).)

CORPORATE SEAL

There is no requirement for a corporate seal on the signature of a deed.

MARGINS OR HEADINGS

There are no statewide requirements with respect to margins or headings. Parties must contact the clerk or city register of the county in which the property is located for specific requirements.

COVER PAGE

While there are no statewide cover page requirements, the county clerks or city register in most counties either:

- Generate a cover page for each deed when it is recorded.
- Require a particular form of cover page to record a deed.

Parties must contact the clerk or city register of the county in which the property is located for specific cover page requirements, if any.

CONSIDERATION

New York law requires that a conveyance be made for valuable consideration (N.Y. Real Prop. Law § 291). Except with respect to an executor's or trustee's deed, the exact consideration does not need to be stated. Deeds typically state a nominal amount of \$10 or \$100.

LEGAL DESCRIPTION

New York law requires that the deed include a description of the property being conveyed (N.Y. Real Prop. Law § 291). The description may be a parcel number or other identifying information. Best practice is to include a metes and bounds legal description of the property.

SIGNATURE PAGES

There are no statewide signature page requirements. Certain clerks or city registers may accept "breakaway" signature pages or may have requirements regarding ink color or whether a "wet" signature is required for recording. Parties must contact the clerk or city register of the county in which the property is located for specific requirements.

E-RECORDING

There are no statewide requirements regarding electronic recording of deeds. Parties must contact the clerk or city register of the county in which the property is located for specific requirements.

7. Provide the statutory form of acknowledgment for:

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

INDIVIDUAL

The New York Real Property Law provides one form of acknowledgment for use when the instrument is executed in New York and allows the same form of acknowledgment to be used when the instrument is executed outside of New York except that the acknowledgment must be changed to show the location where the instrument was executed, which may be:

- Another state.
- The District of Columbia.
- A US territory.
- A foreign country.

Executed in New York

New York Real Property Law Section 309-a provides the following acknowledgment form for use when an instrument is executed **within** New York:

STATE OF NEW YORK)
 COUNTY OF [COUNTY] ss:
)

On the [DATE] day of [MONTH] in the year [YEAR] before me, the undersigned, personally appeared [SIGNATORY NAME], personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] capacity(ies), and that by [his/her/their] signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 Notary Public

My Commission Expires: [DATE]

While a raised notary seal is not required, the notary public usually affixes a stamp or seal and **must** indicate:

- The county of qualification.
- The date when the notary commission expires.

(N.Y. Exec. Law § 137.)

Executed Outside New York

New York Real Property Law Section 309-b provides the following acknowledgment form for use when an instrument is executed **outside** New York:

STATE, DISTRICT OF COLUMBIA,)
 TERRITORY, POSSESSION, OR FOREIGN) ss.:
 COUNTRY)

On the [DATE] day of [MONTH] in the year [YEAR] before me, the undersigned, personally appeared [SIGNATORY NAME], personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) [is/are] subscribed to the within instrument and acknowledged to me that [he/she/they] executed the same in [his/her/their] capacity(ies), and that by [his/her/their] signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 Signature and office of individual taking acknowledgment

New York Real Property Law Section 299 lists the individuals that can take an acknowledgment if the acknowledgment is made outside New York but within the United States or a US territory.

New York Real Property Law Section 301 lists the individuals that can take an acknowledgment if the acknowledgment is made in a foreign country.

CORPORATION

The statutory forms of acknowledgment are prescribed in N.Y. Real Prop. Law §§ 309-a and 309-b. They are the same as the forms of acknowledgment for individuals (see Individual).

LIMITED LIABILITY COMPANY

The statutory forms of acknowledgment are prescribed in N.Y. Real Prop. Law §§ 309-a and 309-b. They are the same as the forms of acknowledgment for individuals (see Individual).

LIMITED PARTNERSHIP

The statutory forms of acknowledgment are prescribed in N.Y. Real Prop. Law §§ 309-a and 309-b. They are the same as the forms of acknowledgment for individuals (see Individual).

TRUSTEE

The statutory forms of acknowledgment are prescribed in N.Y. Real Prop. Law §§ 309-a and 309-b. They are the same as the forms of acknowledgment for individuals (see Individual).

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.

Deeds must be recorded in the office of the clerk or city register of the county where the property is located to be protected by New York's recording act (N.Y. Real Prop. Law § 291). The name and address of the grantee must appear on the deed and becomes public at the recording.

When the grantor or grantee of a deed for residential real property containing one to four family dwelling units is a limited liability company, the transfer tax form to be filed with the deed must be accompanied by a document identifying the names, taxpayer identification number and business addresses of all members, managers, and any other authorized individuals, if any, of that limited liability company. The document must also provide names and business addresses or, if none, the business addresses of all shareholders, directors, officers, members, managers, and partners of any limited liability company or other business entity that are to be members, managers, or authorized individuals, if any, of that limited liability company. (N.Y. Tax Law § 1409(a).)

The New York Department of Taxation and Finance has provided guidance that the foregoing requirement does not apply to residential condominiums or cooperatives outside of New York City.

In New York City, the transfer tax form must disclose the name and taxpayer identification number of the members of the principal limited liability company but nothing further.

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?

When a deed executed on behalf of an entity is recorded, New York law does not require the transferor to file documentation evidencing mergers, conversions, or name changes. However, conversions require approval of the New York Department of State, and name changes require reporting to the New York Department of State and the filing of Form DTF-95 with the New York State Department of Taxation and Finance.

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?
- Are transfer taxes customarily paid by the purchaser or the seller in a direct transfer of real property?

APPLICABLE TAXES FOR DIRECT TRANSFERS

In general, New York imposes a real estate transfer tax on conveyances of real property or interests therein at the rate of \$2 for each \$500 of "consideration" or fractional part of it (N.Y. Tax Law § 1402(a)). For New York City and any other city within New York with a population of one million or more, an additional \$1.25 for each \$500 of consideration or fraction thereof (for a total of \$3.25 for every \$500 of consideration or fraction thereof) must be paid on:

Conveyances of residential real property (for example, a personal residence, including a one, two, or three family house, an individual condominium unit, or a cooperative apartment unit) for consideration of \$3 million or more.

Conveyances of non-residential real property for consideration of \$2 million or more.

(N.Y. Tax Law § 1402(a).)

An additional transfer tax may also be imposed by:

- The state on each conveyance of residential real property (or interests therein) when the consideration is \$1 million or more. This additional tax is:
 - commonly referred to as the mansion tax;
 - charged at the rate of 1% of the consideration paid;
 - paid by the purchaser, provided that if the grantee fails to pay, the seller pays and the parties are jointly and severally liable for the tax.
- (N.Y. Tax Law § 1402-a.)
- Some counties and municipalities that is payable in addition to the New York State real estate transfer tax.

The budget for the New York State Fiscal Year 2020 also imposed an additional transfer tax on each conveyance of residential real property (or interests in that real property), applicable in New York City and any other city within New York with a population of at least one million. This additional tax, also known as the supplemental tax, is charged at increasing rates based on the consideration paid as set forth in N.Y. Tax Law § 1402-b. It is paid by the purchaser, provided that if the grantee fails to pay, the seller pays and the parties are jointly and severally liable for the tax. (N.Y. Tax Law § 1402-b.)

Exemptions from real estate transfer tax apply to conveyances:

- To the federal and state governments and any of their:
 - instrumentalities;
 - agencies;
 - political subdivisions; or
 - public corporations.
- To the United Nations.
- That merely secure a debt or other obligation.
- That confirm, correct, modify, or supplement a prior conveyance.
- Constituting bona fide gifts.
- Given in connection with a tax sale.
- Constituting a mere change in the form of ownership or organization where there is no change in beneficial ownership.
- By deed of partition.
- Under the federal bankruptcy act.
- That consist of the execution of a contract to sell real property without the use or occupancy of the property, or the granting of an option to do so.
- That consist of an option or contract to purchase real property with the use or occupancy of the property where:
 - the consideration is less than \$200,000;
 - the property was used solely by the grantor as his personal residence; and
 - the property consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative unit.
- That consist of real property in tax-free New York areas to business located in those areas that are participating in the Start-Up NY program under Article 21 of the New York Economic Development Law.

(N.Y. Tax Law § 1405(b).)

The following parties, as grantors, are exempt from paying the real estate transfer tax:

- The State of New York and its agencies, instrumentalities, political subdivisions, or public corporations.
- The federal government, its agencies, and instrumentalities.
- The United Nations.

If any of these entities is the grantor, the grantee is responsible for payment of the transfer taxes. (N.Y. Tax Law § 1405(a).)

RETURNS

The seller and purchaser of real property must both jointly complete and execute a single Form TP-584, which includes all of the following:

- The Combined Real Estate Transfer Tax Return.
- The Credit Line Mortgage Certificate.
- The Certificate of Exemption from the Payment of Estimated Personal Income Tax.

The seller and purchaser must then deliver the executed Form TP-584 to the county clerk or city register when the deed is recorded.

Form TP-584 and instructions for completing the form are available through the New York State Department of Taxation and Finance website.

FILING AND PAYMENT DEADLINES

The seller and purchaser must submit Form RP-5217 and Form TP-584 and pay the real estate transfer tax to the county clerk or city register when the deed is recorded (N.Y. Real Prop. Law § 333; N.Y. Tax Law § 1409; see Returns).

Failure to file a Form RP-5217 or Form TP-584 or to pay any Real Estate Transfer Tax can result in a penalty of 10% of the amount of tax due plus an interest penalty of 2% of this amount for each month of delay, not to exceed 25% total (N.Y. Tax Law § 1416(b)).

OTHER LOCAL RETURNS

Some counties and local municipalities have their own form of transfer tax return (and certain other forms) that must be filed with the deed or other conveyance document. The parties should confirm with the applicable municipality or a local title company whether a separate transfer tax return must be filed and the deadline for filing that return. Late filings may be subject to penalties and interest.

CUSTOM

The grantor of real property pays the real estate transfer tax, except the mansion tax and supplemental tax. However, the parties are free to shift the responsibility by contract. If the grantor fails to pay the tax, the grantee becomes statutorily liable for payment of the tax (N.Y. Tax Law § 1404). If the grantee pays the tax, the total consideration is grossed-up by the amount of tax, and the transfer tax is recalculated based on that new amount.

APPLICABLE TAXES FOR INDIRECT TRANSFERS

The real estate transfer tax also applies to a transfer of a “controlling interest” in an entity having an interest in real property.

A controlling interest in the case of a corporation means either:

- 50% or more of the voting power of all classes of stock.
- 50% or more of the capital, profits, or beneficial interests in the voting stock.

In the case of a partnership, association, trust, or other entity, a controlling interest means 50% or more of the capital, profits, or beneficial interests in the partnership, association, trust, or other entity. (N.Y. Tax Law § 1401(b).)

In New York City, the definition of controlling interest is generally the same as the definition used in New York State. However, in New York City the definition of controlling interest in a corporation means 50% or more of either:

- The voting power of all classes of stock.
- The total fair market value of the stock of the corporation.

(N.Y.C. Admin. Code § 11-2101(8).)

The tax is payable at the same rates that apply to direct conveyances (see Question 10).

Non-New York resident individuals, estates, and trusts who transfer real property (in addition to paying the real property transfer tax) must both:

- Estimate their personal income tax on the gain, if any, from the transaction.
- File the Nonresident Real Property Estimated Income Tax Payment Form (Form IT-2663) with the county clerk or city register along with payment of the estimated tax when the deed is recorded.

(N.Y. Tax Law § 663.)

Form IT-2663 is available through the New York State Department of Taxation and Finance Forms and Instructions webpage.

RETURNS

An entity must complete and execute a Form TP-584 return in connection with a transfer of a “controlling interest” in an entity having an interest in real property (see Question 10). The entity must file the form with the New York State Department of Taxation and Finance in Albany, New York rather than with the county clerk or city register.

Form TP-584 is available through the New York State Department of Taxation and Finance website.

FILING AND PAYMENT DEADLINES

Within 15 days of the delivery of the instrument effecting the transfer of a controlling interest in an entity having an interest in real property, the party must both:

- File Form TP-584 with the New York State Department of Taxation and Finance.
- Pay the applicable real estate transfer tax (N.Y. Tax Law § 1410).

Failure to do so can result in a penalty of 10% of the amount of tax due plus an interest penalty of 2% of this amount for each month of delay, not to exceed 25% total (N.Y. Tax Law § 1416(b)).

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?

CUSTOMS

The grantor of real property pays the real estate transfer tax. However, the parties are free to shift the responsibility by contract. If the grantor fails to pay the tax, the grantee becomes statutorily liable for payment of the tax. (N.Y. Tax Law § 1404.) If the grantee pays the tax, the total consideration is grossed-up by the amount of tax, and the transfer tax is recalculated based on that new amount.

RECORDING INTERESTS AND TITLE INSURANCE

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

Ownership interests in real property are recorded with the clerk or city register of the county where the real property is located (N.Y. Real Prop. Law § 291). The transfers are indexed according to the grantor and grantee.

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

In New York, title companies typically conduct title searches, which may include municipal searches for items such as taxes and other assessments, certificates of occupancy, outstanding permits, and violations.

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?

In some counties abstracts of title are furnished, and in others, commitments for title insurance are furnished. Opinions of title are uncommon in New York.

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 in New York are set by a Title Insurance Rate Manual which is prepared by the Title Insurance Rate Service Association (TIRSA), an organization licensed by the superintendent of the Department of Financial Services. Therefore, title insurance premiums are standard and are not subject to negotiation.

There are discounts available for certain reissued mortgagee policies and for fee and mortgagee policies issued simultaneously.

For more information, see the TIRSA Title Insurance Rate Manual for New York State.

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

Title insurance premiums in New York are set by a Title Insurance Rate Manual which is prepared by the Title Insurance Rate Service Association (TIRSA), an organization licensed by the New York State Superintendent of the Department of Financial Services.

The endorsements that are currently available in connection with an owner's title insurance policy for non-residential property include the following:

- Standard New York Endorsement.
- TIRSA Co-Insurance Endorsement.
- TIRSA Condominium Endorsement.
- TIRSA Contiguity Endorsement.
- TIRSA Contract Vendee Endorsement (Commercial).
- TIRSA Cooperative Endorsement.
- TIRSA IDA Endorsement.
- TIRSA Increase in Amount of Insurance Endorsement.
- TIRSA Joint & Several Liability Endorsement.
- TIRSA Land Same As Survey Endorsement.
- TIRSA Leasehold Endorsement.
- TIRSA Mezzanine Financing Endorsement.
- TIRSA New York City "Development Rights" Endorsement.
- TIRSA Non-Imputation Endorsement.
- TIRSA Option Endorsement.
- TIRSA Planned Unit Development Endorsement (Endorsement 5.1).
- TIRSA Policy Authentication Endorsement.
- TIRSA Waiver of Arbitration Endorsement.

The language of these endorsements is not subject to negotiation.

For more information, see the TIRSA Title Insurance Rate Manual for New York State.

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?

Generally, the risk of loss transfers from the seller to the purchaser when the purchaser takes possession or title.

New York has adopted the Uniform Vendor and Purchaser Risk Act (N.Y. Gen. Oblig. Law § 5-1311). The seller and purchaser can negotiate which party bears the risk of loss, and contracts may include an express waiver of the Uniform Vendor and Purchaser Risk Act.

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 and limited partnerships are the most common entities used to acquire commercial real property because they provide some insulation from liability and favorable tax treatment for their respective members or partners.

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

Although New York does not prohibit real estate investment trusts (REITs), 75% or more of publicly held REITs (including those owning New York real property) are reportedly formed under REIT-friendly Maryland law.

REGULATION AND TAXATION

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

Real property taxes in New York are local taxes levied and collected by the city, village, town, county, school district, and special improvement or service districts in which the subject property is located.

Real property tax rates vary significantly depending on the location of the property.

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