



Real Estate Ownership: Arizona

Clare H. Abel, Burch &
Cracchiolo, P.A.

This Article is published by Practical Law Company on
its ^{PLC}Real Estate web service at
<http://us.practicallaw.com/8-500-5927>.

A Q&A guide to real estate ownership law in Arizona.

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?

The use of a deed to convey property passes fee simple title unless the language in the deed indicates that the interest being conveyed is something else, such as a quit claim deed, easement or a future expectancy.

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

There are no specific words required to convey fee simple title to real property. However, Section 33-402 of the Arizona Revised Statutes provides forms that are sufficient to convey title to real property.

All conveyances of real property must be:

- In writing.
- Duly acknowledged before a person authorized to take acknowledgements (notary).
- Delivered to the person to whom the interest is being conveyed.

(*Ariz. Rev Stat. § 33-401 (2012).*)

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

In Arizona, in addition to a fee simple absolute, the following estates in lands are permitted:

- **Estates of inheritance.** An estate of inheritance is termed a fee simple or fee, and when not defeasible or conditional, it is a fee simple absolute.
- **Life estates.** This is a freehold estate measured by the life or lives of one or more persons. On the expiration of the life estate, the fee interest passes either to a third party or, if no third party is designated, reverts to the grantor.
- **Estates for years.** This is an interest in land that is capable of being transferred. It possesses many characteristics of an ordinary chattel, and has some aspects of real property in that it passes a present interest in land (*Harbel Oil Co. v. Steele, 318 P.2d 359 (Ariz. 1957)*).
- **Estates at will.** These are similar to tenancies although there may be no defined beginning or ending date.
- **Estates by sufferance.** One who remains in possession of property after termination of his interest under a deed of trust is a tenant at will or sufferance (*Andreola v. Arizona Bank, 550 P.2d 110 (Ariz. Ct. App. 1976)*).

Fee tail estates or interest are not permitted in Arizona. (*Ariz. Rev. Stat. § 33-201 (2012).*)

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 Arizona, taxable real property includes ownership of, claim to, possession of or right of possession to lands or patented mines (*Ariz. Rev. Stat. § 42-11001(13) (2012)*). Real estate taxes are ad valorem taxes based on valuations of real property that include the improvements on the real property.

Real property is identified, classified and valued based on its current use. The three most used legal classes are:

- Residential.
- Commercial.
- Vacant Land.

EXEMPTIONS

Exemptions from ad valorem property taxes are available through an application and approval process for:

- Arizona residents who are widows, widowers or disabled persons (*Ariz. Rev. Stat. § 42-11111 (2012)*).
- Religious property (*Ariz. Rev. Stat. § 42-11109 (2012)*).
- Government property (*Ariz. Rev. Stat. § 42-11102 (2012)*).
- Community service charitable organizations (*Ariz. Rev. Stat. § 42-11121 (2012)*).

RATE AND NATURE OF TAXES

Ad valorem taxes are divided into two categories:

- Primary taxes, which are for maintenance and operation of:
 - school districts;
 - cities;
 - counties; and
 - community college districts.
- Secondary taxes, including:
 - bonds;
 - budget overrides; and
 - special districts such as fire, flood control and other limited purpose districts.

Depending on whether primary or secondary taxes are being calculated, the amount of tax owed is based on either the:

- Full Cash Value (FCV), which is the market value of the real property with improvements. FCV is used to compute secondary taxes.
- Limited Property Value (LPV), which is the limited property value of the property in the preceding valuation year plus the greater of either:
 - 10% of that value; or
 - 25% of the difference between the full cash value of the parcel in the current valuation year and the limited value of the parcel in the preceding valuation year.

The current limited value of a parcel of property may not exceed its current full cash value. LPV is used to compute primary taxes.

(*Ariz. Rev. Stat. § 42-13301 (2011)*.)

The property tax rates are set each year by the city and county where the property is located. This process is completed by August 31.

The tax rates are a product of the assessed value of the property (either FCV or LPV) multiplied by the tax rates set by the city and county in which the property is located, as well as the tax levies of any special districts that apply to the real property, such as school districts, library districts, fire districts or improvement districts.

For the three most common types of real property, the taxing authorities use the following calculations to determine the real estate taxes:

- Residential (Owner-occupied), 10% of either FCV or LPV, depending on whether it is a calculation of primary or secondary taxes.
- Commercial, 20% of either FCV or LPV, depending on whether it is a calculation of primary or secondary taxes.
- Vacant Land, 16% of either FCV or LPV, depending on whether it is a calculation of primary or secondary taxes.

PAYMENT AND COLLECTION

The lien for real property taxes is issued on January 1 of each year for the taxes for that year. Property taxes are collected “in arrears,” with taxes from the first half of the year due on or before November 1, and taxes for the second half of the year due on or before May 1 of the following year.

Failure to pay real property taxes on a timely basis results in interest and penalties accruing against the property.

After two years, the unpaid tax liens are sold at a public auction and a certificate of purchase is issued to the party purchasing the tax lien. The certificate of purchase holder has the right, after three years (which is five years after the tax was due) to institute an action to foreclose its lien and take title to the real property.

The property owner can redeem the tax lien at any time before foreclosure of the lien by paying the unpaid tax plus all accrued penalties, interest and the fees and costs of the certificate of purchase holder.

(*Ariz. Rev. Stat. §§ 42-18101 to 42-18127 (2012)*.)



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.

In Arizona, fee title is typically conveyed by one of the following.

GENERAL WARRANTY DEED

A general warranty deed provides the grantee the broadest protection for claims against title. The general warranty deed:

- Warrants the grantor's free and clear title and ownership of the real property.
- Warrants the grantor's right to convey title to the real property.
- Covenants to defend the grantee's title from claims of third parties.

The following language is considered sufficient to convey title by general warranty deed:

For the consideration of [AMOUNT], I hereby convey to [GRANTEE NAME] the following real property [DESCRIPTION OF REAL PROPERTY] and I warrant the title against [all persons whomsoever/[OTHER WORDS OF WARRANTY]].

SPECIAL WARRANTY DEED

A special warranty deed provides the grantee with certain limited warranties and covenants. For example, a special warranty deed may:

- Warrant the grantor's clear fee title subject to certain noted exceptions and encumbrances.
- Covenant to defend against title claims arising from the grantor's ownership except as specifically stated.

The following language is considered sufficient to convey title by special warranty deed:

For the consideration of [AMOUNT], I hereby convey to [GRANTEE NAME] the following real property [DESCRIPTION OF REAL PROPERTY] and I warrant the title against [all persons whomsoever/[OTHER WORDS OF WARRANTY]] except as follows: [LIST EXCEPTIONS].

QUITCLAIM DEED

A quitclaim deed is used to convey an interest in real property without any warranty for the grantor's:

- Title or interest in the real property.
- Ability to convey an interest in the real property.

A quitclaim deed has no covenant to defend the interest conveyed by the grantor. The following language is sufficient to convey an interest by quitclaim deed:

For the consideration of [AMOUNT], I hereby quit claim to [GRANTEE NAME] all my interest in the following real property [DESCRIPTION OF REAL PROPERTY].

OTHER DEEDS

In recent years, and especially in commercial transactions where title insurance is being provided, a special warranty deed is becoming the most common instrument used to convey fee title. The grantor warrants title except for those exceptions that appear on Schedule B of the title insurance policy. A copy of the Schedule B exceptions is then attached to the special warranty deed that is recorded.

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

- Trustee's deeds.
- Arizona Beneficiary deeds.
- Sheriff's deeds.
- Personal Representative/Executor's deeds.

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.

OFFICERS

In Arizona, there is no requirement that a specific officer sign a deed on behalf of a corporation.

LANGUAGE FOR SIGNATURE BLOCK

There is no specific language that must be included in the signature block. However, the signature block must identify the:

- Person signing.
- Capacity in which the person executes the document.

When a trust is taking title to real property in Arizona, the identity of the beneficiaries must be included, although this does not necessarily need to be done in the signature block (*Ariz. Rev. Stat. § 33-404 (2012)*).



LIMITED PARTNERSHIP

STATE OF [STATE])
)
 COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], as General Partner of the [NAME OF LIMITED PARTNERSHIP] Limited Partnership, a [STATE OF FORMATION] limited partnership, whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document for the purposes therein stated.

[SEAL] [NOTARY SIGNATURE]
 Notary Public

TRUSTEE

STATE OF [STATE])
)
 COUNTY OF [COUNTY])

On this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], as Trustee of the [NAME OF TRUST] Trust dated [MONTH] [DAY], [YEAR], whose identity was proven to me on the basis of satisfactory evidence to be the person who [he/she] claims to be, and acknowledged that [he/she] signed the [above/attached] document for the purposes therein stated.

[SEAL] [NOTARY SIGNATURE]
 Notary Public

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.

When real property is conveyed, the name of the following must be disclosed:

- Corporation.
- Entity.
- Individual.
- Limited liability company.
- Trust to which real property is conveyed.

If real property is conveyed to a trust, the deed or conveyance must publicly disclose each of the following:

- Name of the trust.
- Name of any beneficiaries of the trust.
- Recording information for the Certificate of Trust Existence. (*Ariz. Rev. Stat. § 33-404 (2012).*)

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?

Title to real property is automatically conveyed to the surviving entity when the merger involves:

- Corporations (*Ariz. Rev. Stat. § 10-1106(A)(2) (2012).*)
- Limited liability companies (*Ariz. Rev. Stat. § 29-757(A)(4) (2012).*)
- Limited partnerships (*Ariz. Rev. Stat. § 29-373(A)(2) (2012).*)

When there is a merger involving a general partnership, the surviving entity must record a certified copy of the statement of merger in each county in which the real property is located (*Ariz. Rev. Stat. § 29-1087(D)-(E) (2012).*)

Although it is not required in Arizona to make a filing for mergers that do not involve general partnerships, it is customary to record a certified copy of the statement of merger in all counties in which real property is located in all cases.

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

Section 24 of Article 9 of the Arizona Constitution prohibits any taxes on the conveyance of real property not already in effect as of December 31, 2007.

However, at Article 9's enactment, a municipal tax called the "speculative builder tax" was already in place. The speculative builder tax is imposed on the sale of "improved real property" if the real property is sold before completion or within 24 months after the improvements are substantially complete. Some jurisdictions allow offsets for construction sales taxes paid.

Because the regulations vary from city to city, individual review of the municipal tax regulation must be made to determine:

- The definition of improvements.
- Any offsets allowed.
- Other issues that may vary the imposition or amount of tax owed.

RETURNS

The documents to file for the speculative builder tax varies from municipality to municipality, although they generally follow the format of the Model Tax Code. Because of the nature and calculation of the speculative builder tax, the returns and the process for paying and filing returns would have to be discussed with an individual city or county.

FILING AND PAYMENT DEADLINES

Generally, the speculative builder tax is due on the sale of real property.

CUSTOM

Payment of the speculative builder tax is a matter of negotiation between the parties and the distribution of the tax liability is the subject of considerable debate. Most often, a buyer requires the seller to:

- Represent and warrant that there are no such taxes owed.
- Indemnify the buyer as to any liabilities related to this tax that later arise.

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?

APPLICABLE TAXES FOR INDIRECT TRANSFERS

Arizona does not have any transfer taxes, except for the speculative builder tax, which applies only to real property where the transfer occurs when improvements are being done or were recently completed (see *Question 10*).

RETURNS

See *Question 10*.

FILING AND PAYMENT DEADLINES

See *Question 10*.

CUSTOMS

See *Question 10*.

RECORDING INTERESTS AND TITLE INSURANCE

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

Real property transfers, interests and conveyances are recorded in the office of the county recorder where the property is located. For each transfer, the Arizona counties maintain the:

- Date.
- Type of instrument used.

Each county also maintains grantor-grantee indices.

The records can be searched online or in person by any of the indices for no fee. Fees are charged to obtain official copies of the recorded documents.

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

In virtually all circumstances where a title search is requested, title insurance companies conduct title searches in Arizona.

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 Arizona, an owner's policy of title insurance is obtained from a title insurance company. Neither abstracts of title or opinions of title are used in Arizona.

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 companies are regulated by the:

- *Arizona Department of Insurance* for any insurance issued.
- *Arizona Department of Financial Institutions* for their role as an escrow agent.

Rates must be provided to and are published by the State of Arizona. There is little or no ability to negotiate those rates. Discounts are not available for reissued policies, as these rates are posted as well.



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

Each title insurer and underwriter has its own list of endorsements that it may extend on a given transaction. However, it is customary in Arizona to begin with an ALTA owner's policy and, where applicable, a lender's policy. The insurer's willingness to issue additional endorsements varies from transaction to transaction.

Endorsements that have been utilized in Arizona transactions include but are not limited to:

- Zoning (Unimproved Land/Completed Structure) (ALTA Form 3).
- Environmental Protection Lien (ALTA Form 8).
- Restrictions, Encroachments, Minerals (Owner's, Lender's Unimproved Land, Improved Land) (ALTA Form 9).
- Leasehold (ALTA Form 13).
- Future Advance (ALTA Form 14).
- Access (ALTA Form 17).
- Tax Parcel (ALTA Form 18).
- Contiguity (ALTA Form 19).
- Survey (ALTA Form 25).
- Subdivision (ALTA Form 26).

Arizona does not regulate the type or extent of endorsements that a title insurer may issue. In Arizona title insurance is regulated by the *Arizona Department of Insurance*. Their actions as an escrow agent are regulated by the *Arizona Department of Financial Institutions*.

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?

In Arizona, during the contract period the risk of loss remains with the seller while a transaction is pending.

The parties may agree otherwise by contract. Parties will sometimes agree to transfer the risk of loss to the buyer for certain risks or for limited circumstances, such as if testing is being done by the buyer. However, the most common circumstance is for the seller to bear the risk of loss.

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?

There is no single or predominant structure for acquiring real estate in Arizona. Corporations, limited liability companies and partnerships are used most often in commercial transactions with the specific structure being based on the buyer's requirements.

Perhaps the method that is used **least** is the recorded contract for conveyance of real property (*Ariz. Rev. Stat. §§ 33-741 to 33-750 (2012)*).

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

Real Estate Investment Trusts (REITs) are currently permitted in Arizona and they are fairly common.

REGULATION AND TAXATION

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

In Arizona there is significant variation in local land use regulation of real property. There is also significant variation in local taxation, including variation in:

- Transaction privilege taxes, which are often charged on rentals by municipalities.
- Speculative builder taxation (see *Question 10*).
- School district taxation (see *Question 4*).

Perhaps the largest variable in real property taxation is found in the presence or absence of special improvement districts and school districts, including whether those school districts have had budget overrides approved.

Practical Law Company provides practical legal know-how for law firms, law departments and law schools. Our online resources help lawyers practice efficiently, get up to speed quickly and spend more time on the work that matters most. This Article is just one example of the many resources Practical Law Company offers. Discover for yourself what the world's leading law firms and law departments use to enhance their practices.

Contact Us

Practical Law Company
747 Third Avenue, 36th Floor
New York, NY 10017
646.562.3405
plcinfo@practicallaw.com
www.practicallaw.com