

New Reporting Requirements - Transfer of Entity Interests in lieu of Real Property Purchase

The Florida legislature recently enacted a new law that imposes reporting requirements in those instances in which there are significant ownership changes in entities such as corporations, limited liability companies or partnerships that own real property in the State of Florida.¹ Specifically, transactions must now be reported if a transfer of control or a transfer of more than fifty percent (50%) of the ownership interests in the entity occurs. Excluded from the reporting requirements are (i) transfers of title to correct an error, (ii) transfers between legal and equitable title, or (iii) transfers between husband and wife, including a transfer to a surviving spouse or a transfer due to dissolution of marriage. The new statute does not further address or elaborate on what types of errors are excluded from the reporting requirements, nor does it further explain the meaning of transfers between legal and equitable title.

The purpose behind this new reporting requirement is undoubtedly derived from the goal of state/local governments seeking to minimize the loss of tax revenues which are not otherwise collected when a purchaser acquires the shares/interests of the owning entity as opposed to the property itself. Since neither documentary stamp taxes are collected upon the sale of shares/interests of the owning entity, nor is the assessed value of the real property reappraised upon such an acquisition, the purchase of shares/interests in the owning entity has become an increasingly favorite tax savings mechanism over the traditional property acquisition method.

Failure to adhere to the reporting guidelines can result in very severe penalties. Should a transfer that is otherwise required to be reported not be reported, then the owner of the property will be obligated to pay all taxes that were avoided by such failure to report plus fifteen percent (15%) interest per annum and a penalty of fifty percent (50%) of the taxes avoided. Moreover, the property appraiser has the duty to file a tax lien against the property, or, if the property is no longer owned by the purchaser, on any other property owned by the purchaser within the State of Florida.

In addition to remaining vague on certain specifics relating to the reporting requirement exclusions, the new law does not specifically address who is required to comply with the reporting requirements (presumptively it is the entity that owns the real property), nor does it enumerate the reporting method or forms that are to be used for reporting. These questions, as well as other issues related to the transfer and reporting requirements, will likely be answered by the Florida Department of Revenue through the imposition of more specific guidelines, rules and regulations. However, in the interim, it is clear that state and local governments have taken a considerable step in curbing the loss of tax revenue by attempting to close a specific tax loophole by enacting this particular law.

If you should have questions regarding these new requirements, please contact Thomas Angelo, Esq. at (954) 766-9930 or at tpa@angelolaw.com.

¹ Fla. Stat. 193.1554 - 193.1556 (2008).