

Real Estate Ownership: Rhode Island

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A Q&A guide to commercial real estate laws for owners and purchasers in Rhode Island. 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 (3-517-4022)).

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 Rhode Island, the use of a deed to convey property passes fee simple title unless the language in the deed indicates that the parties intend to convey some other interest, such as an easement.

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

Although there are no specific words required to convey an absolute fee simple estate, most conveyances use either a warranty or a quitclaim deed.

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

Life estates are used occasionally in Rhode Island. A life estate is when title to the real property is held for a term that expires on the death of either:

- The fee title owner.
- Another person expressly specified in the instrument creating the life estate.

The life of the owner, or the expressly designated third-party, is the “measuring life” of the life estate.

The fee tail has been significantly modified under Rhode Island law and has become extremely rare.

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

All real property in Rhode Island is subject to taxation unless otherwise provided (R.I. Gen. Laws § 44-3-1). The following are some examples of what is considered “real property” for real property taxation:

- Commercial real estate, including office buildings, manufacturing facilities, recreational facilities, quarries, and agricultural properties.
- Residential real estate, including apartment buildings, condominiums, multi-family dwellings, and single family homes.

EXEMPTIONS

Various types of property are exempt from real property taxes. The most common categories for exemption are:

- Property owned by the US, the State of Rhode Island, or a political subdivision of the state.
- Property used for charitable or educational purposes.
- Religious institutions.

(R.I. Gen. Laws § 44-3-3.)

Title 44, Chapter 3 of the Rhode Island General Laws contains a number of other exemptions:

- Based on the use of the property.
- Based on the owner's status, such as for the elderly or veterans.
- That are specific to certain towns or cities.

(R.I. Gen. Laws §§ 44-3-3.1 to 44-3-65.)

RATE AND NATURE OF TAXES

The rate for taxes is a product of assessed value multiplied by the tax rate (limited to a 4% overall cap on increases to the municipality's total levy under Section 44-5-2(b) of the Rhode Island General Laws) set by:

- The municipality in which the property lies.
- Various tax levies of districts serving the property, such as sewer districts and fire districts. Real property tax rates are set annually, usually in July or August.

PAYMENT AND COLLECTION

Tax bills are generally sent out by municipalities in July or August of each year. Payments are usually due in four payments, unless the total tax is less than \$100, and are often due in August, October, January, and April following the receipt of the tax bill.

If the first installment or any succeeding installment of taxes is not paid by the last date of the respective installment period, then the whole tax or remaining unpaid balance of the tax immediately becomes due and payable and carries a penalty at the rate of:

- Not less than 6% per year.
- Not more than 18% per year.
- In the case of the city of Cranston, not more than 12% per year.

(R.I. Gen. Laws § 44-5-8(a).)

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.

There are several kinds of deeds that may be used to convey fee title. The most common deeds used in Rhode Island are:

- **Warranty deed.** A general warranty deed provides the grantee with certain covenants and warranties from the grantor, including a:
 - warranty of the grantor's clear fee title subject only to noted encumbrances;
 - warranty of the grantor's ownership of the real property;

- warranty of the grantor's undisputed right to convey the real property; and
- covenant to defend against title claims by third parties.

- **Quitclaim deed.** A quitclaim deed provides the grantee with the grantor's interest in the real property, whatever that may be, without any covenants or warranties from the grantor. A deed with the words "remise, release, and forever quit claim" is typically construed to represent a quitclaim deed.

Warranty deeds are the most commonly sought deeds by buyers of real property as they provide the greatest amount of protection for the grantee.

There are also certain deeds tied to the office or position of the grantor, such as:

- Trustee's deed.
- Sheriff's deed.
- Collector's deed.
- Personal representative's deed.
- Bargain and sale deed.

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

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

LANGUAGE FOR SIGNATURE BLOCK

Though not required by statute, the signatory's name and title should appear in the signature and notary blocks on the deed to prevent ambiguity about the capacity in which the person is signing.

AUTHORIZATION TO DO BUSINESS

A certificate of authority to do business in Rhode Island is not required if the grantee on the deed is a foreign company. However, Rhode Island tax law does provide that certain tax withholding is required when the grantor on the deed is a foreign company (R.I. Gen. Laws § 44-30-71.3).

CORPORATE SEAL

Rhode Island law does not require that a corporate seal be affixed to the deed.

MARGINS OR HEADINGS

Rhode Island law does not require any specific margins or headings.

COVER PAGE

Rhode Island law does not require the use of a cover page.

OTHER REQUIREMENTS

There are no other state or local recording requirements for a deed.

7. Provide the statutory form of acknowledgment for:

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

The Rhode Island General Laws do not prescribe a specific notary clause form of acknowledgment for real estate sale transactions (R.I. Gen. Laws § 34-12-1). Some forms that are used in Rhode Island follow:

INDIVIDUAL

STATE OF RHODE ISLAND)
COUNTY OF [COUNTY])

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], [personally known to the notary/[SIGNATORY NAME] proved to the notary through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], to be the person whose name is signed on the preceding or attached document], and acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed.

Notary Public

Name: [NOTARY NAME]

My Commission Expires: [DATE]

CORPORATION

STATE OF RHODE ISLAND)
COUNTY OF [COUNTY])

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [CORPORATION NAME] [to me known and known by me to be the person executing the foregoing instrument/who proved to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [CORPORATION NAME].

Notary Public

Name: [NOTARY NAME]

My Commission Expires: [DATE]

LIMITED LIABILITY COMPANY

STATE OF RHODE ISLAND)
COUNTY OF [COUNTY])

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [LLC NAME] [to me known and known by me to be the person executing the foregoing instrument/who proved to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [LLC NAME].

Notary Public

Name: [NOTARY NAME]

My Commission Expires: [DATE]

LIMITED PARTNERSHIP

STATE OF RHODE ISLAND)
COUNTY OF [COUNTY])

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], before me personally appeared [SIGNATORY NAME], in [his/her] capacity as [SIGNATORY TITLE/POSITION] of [NAME OF LIMITED PARTNERSHIP] [to me known and known by me to be the person executing the foregoing instrument/who proved to me through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], and [he/she] acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of said [NAME OF LIMITED PARTNERSHIP].

Notary Public

Name: [NOTARY NAME]

My Commission Expires: [DATE]

TRUSTEE

STATE OF RHODE ISLAND)
COUNTY OF [COUNTY])

In [CITY], in said County, on this [DATE] day of [MONTH], [YEAR], [before me personally appeared [SIGNATORY NAME], as Trustee of the [NAME OF TRUST] Trust, [personally known to the notary/[SIGNATORY NAME] proved to the notary through satisfactory evidence of identification which was [TYPE OF IDENTIFICATION]], to be the person whose name is signed on the preceding or attached document, and acknowledged said instrument by [him/her] so executed to be [his/her] free act and deed in such capacity and the free act and deed of the Trust.

Notary Public

Name: [NOTARY NAME]

My Commission Expires: [DATE]

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.

In Rhode Island, the only information that must be publicly disclosed is the name of the owner, which may be:

- A corporation.
- A trust.
- An individual.
- A limited liability company.
- Another entity.

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?

To evidence a merger, conversion, or name change, a corporation must, within 60 days, file a certificate with the city or town clerk or the recorder of deeds where the property is located that both:

- Is duly acknowledged or notarized.
- Lists the previous and new names.

(R.I. Gen. Laws § 34-13-11.)

The city or town clerk or recorder of deeds must record and index the certificate in the land records (R.I. Gen. Laws § 34-13-11).

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 Rhode Island, there is a tax on every deed, instrument, or writing, where real property is either:

- Granted.
- Assigned.
- Transferred.
- Conveyed.
- Vested.

(R.I. Gen. Laws § 44-25-1.)

For the tax to apply, the real property must be sold for more than \$100 (R.I. Gen. Laws § 44-25-1).

The current tax rate is \$2.30 per \$500 of consideration, or fractional part of it, including the value of any lien or encumbrance remaining at the time of sale (R.I. Gen. Laws § 44-25-1).

RETURNS

Rhode Island does not require any transfer tax returns. The transfer tax is paid to the municipal clerk recording the deed.

FILING AND PAYMENT DEADLINES

The tax must be paid at the time of recording, as a condition to acceptance of the deed for recording by the land evidence records clerk.

CUSTOM

Under Rhode Island law, unless there is an agreement to the contrary, the grantor pays the transfer tax (R.I. Gen. Laws § 44-25-1(a)).

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

In Rhode Island, certain indirect transfers of interests in real property have the same tax requirements and consequences as direct transfers (see Question 10).

An indirect transfer of interests in real property triggers the transfer tax if it has the effect of making any "real estate company" an "acquired real estate company" (R.I. Gen. Laws § 44-25-1).

A "real estate company" is a corporation, limited liability company, partnership, or other legal entity that either:

- Is primarily engaged in the business of holding, selling, or leasing real estate where 90% or more of the ownership of the real estate is held by 35 or fewer persons and the company:
 - derives 60% or more of its annual gross receipts from the ownership or disposition of real estate; or
 - owns real estate the value of which comprises 90% or more of the value of the entity's entire tangible asset holdings, with certain exceptions.
- Has 90% or more of its ownership interests held by 35 or fewer persons and owns as 90% or more of the fair market value of its assets a direct or indirect interest in a real estate company.

(R.I. Gen. Laws § 44-25-1(e).)

An “acquired real estate company” is a “real estate company” that has undergone a change in ownership interest if the change both:

- Does not affect the continuity of the company’s operations.
- Either alone or together with prior changes has the effect of granting, transferring directly or indirectly, assigning, conveying, or vesting 50% or more of the total ownership in the company within a period of three years.

(R.I. Gen. Laws § 44-25-1(d).)

RETURNS

The transferor must complete and file the Acquired Real Estate Company Conveyance Tax Return (Form CVYT-2) and a copy of the purchase and sale agreement with the Rhode Island Division of Taxation’s Excise Tax Section (Rhode Island Division of Taxation, Instructions for Payment of Real Estate Conveyance Tax for an Acquired Real Estate Company).

FILING AND PAYMENT DEADLINES

The transferor must file written notification of the transfer and pay the applicable tax at least five days before the transfer (R.I. Gen. Laws § 44-25-1(f)).

CUSTOM

See Question 10: Custom.

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 various municipalities’ land evidence offices. Each municipality maintains a grantor-grantee index and the records can be searched by either name.

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

Both title insurance companies and attorneys conduct title searches in Rhode Island.

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?

The vast majority of purchasers in Rhode Island obtain an owner’s policy of title insurance. Very few opinions of title or abstracts of title are used today.

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 charges are based on rates the insurers file with the Rhode Island Department of Business Regulation, Division of Insurance Regulation. There is little or no negotiation to the title insurance rates filed. Some discounts may be offered by title companies if there is a recent policy the company or its underwriter has written on the property.

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

Each underwriter has a list of endorsements it offers.

The most common endorsements are:

- American Land Title Association (ALTA) 2 (Truth in Lending).
- ALTA 3 (Zoning (Unimproved Land/Completed Structure)).
- ALTA 6 (Variable Rate Mortgage).
- ALTA 8 (Environmental Protection Lien).
- ALTA 9 (Restrictions, Encroachments, Minerals (Owner’s, Lender’s, Unimproved Land, Improved Land)).
- ALTA 11 (Mortgage Modification).
- ALTA 12 (Aggregation).
- ALTA 13 (Leasehold).
- ALTA 14 (Future Advance).
- ALTA 17 (Access).
- ALTA 18 (Tax Parcel).
- ALTA 19 (Contiguity).
- ALTA 25 (Survey).
- ALTA 26 (Subdivision).

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 general, the risk of loss remains with the seller while a sale contract is pending. This can be varied by the terms of the contract, though most often the contract provides that the seller bears the risk of loss and must maintain insurance on the property.

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 predominant structure for acquiring real estate in Rhode Island. Limited liability companies, however, are widely used and continue to gain in popularity for tax and personal liability reasons.

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

Real estate investment trusts (REITs) are permitted in Rhode Island. However, they are not commonly used.

REGULATION AND TAXATION

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

In Rhode Island, the largest variable in local real estate regulation or taxation is the municipal levy. Municipalities may have a widely varying levy depending on many factors, including:

- The mix of properties in the municipality.
- The values of the properties.
- The amount of untaxed or exempt properties.

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