

Guide to Buying & Selling Property in South Florida



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About the Author

Marlyn J. Wiener is a real-estate and business law attorney with offices in Coral Gables and Boca Raton. She specializes in providing experienced legal advice to clients buying and selling real estate in South Florida. She has participated in hundreds of transactions for both residential and commercial real estate. She is a licensed title and closing agent for Attorneys Title Fund Services, LLC, issuing title insurance policies through Old Republic National Title Insurance Company, one of the largest and most well respected underwriters in Florida.





Steps to Buying or Selling Property in South Florida

For a buyer, the first step is to identify your property. Typically buyers identify a property through working with a realtor who will show them properties. However, a buyer might locate a property that is being sold directly by an owner – known as “For Sale by Owner.” Once the buyer identifies the property, the next step is to make an offer. In Florida, the offer is actually presented on a formal purchase contract. Most residential real estate transactions are submitted using the FABAR contract forms which have been approved by the Florida Association of Realtors and the Florida Bar Association. If the seller signs the purchase contract presented by the buyer, the parties have a deal. As a result, it is extremely important to make sure that the terms of the deal that you want are set forth in that purchase contract because once buyer and seller sign it - you have a live, binding contract.



Key Provisions of the Purchase Contract

- Clearly identify the property (by street address and tax folio number).
- Clearly identify the buyer, seller and the real estate broker(s).
- Set forth the purchase price, down payment and the terms of any financing the buyer requires.
- Include realistic timeframes for property inspection, financing contingency, association application and approvals, any other contingencies, and closing date. Dates matter – the parties must perform their obligations by the date specified or risk being in default under the terms of the contract.
- If the property is in a homeowners association or a condo association, include the appropriate association addendum. Determine who will be responsible for the payment of any special assessments that have already been approved by the Association, or that are adopted between the time the purchase contract is signed and closing.
- Make sure that any special terms that the buyer and seller have agreed to are clearly set forth in the purchase contract.



Special Terms

Examples of special terms would include some of the following

- Pre- or post-occupancy agreement
- Repairs to be made by the seller
- Personal property inclusions or exclusions
- Any credit the seller will be providing to the buyer for repairs, or to pay for buyer closing costs
- Which party is responsible for closing out open or expired permits and curing municipal code violations



Closing Costs

- The closing costs to be paid by the buyer and the seller are typically allocated according to the custom in the county in which the property is located.
- For example, in Broward and Miami-Dade counties, the buyer selects the title and closing agent and pays for the buyer's title insurance premium. In Palm Beach County, and most counties north of Palm Beach, the seller selects the title and closing agent, and the seller pays the premium on the owner's title insurance policy.
- In all counties, the custom is for the seller to pay the documentary stamps tax on the deed and the buyer pays the documentary stamps tax on its mortgage as well as the intangible tax on the mortgage note.
- In all counties, it is custom for the seller to pay the commission to the realtor, although the buyer and seller may each pay a small transaction or processing fee to their respective brokers.
- Real estate taxes and HOA and condo dues are prorated as of the date of closing.
- The buyer pays the cost to record both the deed and the buyer's mortgage. The seller pays the cost to record any documents to clear title issues.
- The buyer pays for the survey of the property.



Insurance

- Buyers will need to obtain property insurance effective on the date of closing. Depending upon the location of the property, the buyer may also be required to obtain flood insurance. The FARBAR contract provides an automatic extension of the closing date if property insurers are not issuing new policies due to certain weather conditions. In Florida, no application for new coverage or endorsement for increased coverage may be bound, written or issued, or monies received, regardless of effective date, when a tropical depression, tropical storm, or hurricane watch or warning has been issued by the National Weather Service for any part of the State of Florida.



Commercial Property

- Purchasers of commercial property will want an extensive period of time (typically 30-90 days) to perform due diligence on the property.
- Due diligence examples include:
 - o Property inspection
 - o Review of tenant leases
 - o Review of zoning and building codes
 - o Environmental inspection including phase I and II environmental assessments
 - o Property appraisal
 - o Confirmation of utilities
 - o Interviews with tenants
 - o Review of financial and operating statements
- Purchasers of commercial property typically will form an entity to own the property.
- Most property owners form a Limited Liability Company to acquire ownership.
- The entity formation must be completed prior to the acquisition of the property.



Florida Real Estate Taxes

- Florida real estate taxes are paid in arrears
- This means that the bill that the property owner receives in November of each year, covers the period for that year. For example, a bill received in November 2017 covers the taxes for the period January 1 through December 31, 2017.
- Each year, the property owner will receive a Truth In Millage Notice (TRIM) notice in August that provides the property appraiser's estimate of the taxes that will be billed in November of that year.
- There is a short window to appeal the assessment set forth in the TRIM notice.
- Typically the appeal is due within 25 days after the receipt of the TRIM notice.
- Property taxes can be paid at a discount as follows:
 - 4% discount if paid in November
 - 3% discount if paid in December
 - 2% discount if paid in January
 - 1% discount if paid in February
- Some counties allow the real estate taxes to be paid on a quarterly basis. You can check with the tax collector for your county to see if that option is available.

Homestead Exemption

- Property owners who occupy their Florida property as their primary residence may be eligible for the Florida homestead exemption.
- The requirements for this exemption include:
 - You must own and occupy the property as your primary residence on January 1 of the year in question.
 - You must file a homestead exemption application with the property appraiser no later of March 1st of the year in question.
 - You must fully complete the homestead application. The application will require the recording information on your deed, driver's license, auto registration, and voter registration information all showing the address of the property for which you are seeking homestead.
 - US citizens and permanent residents are eligible for a homestead exemption.
 - Homestead tax exemption may entitle to you to up to a \$50,000 reduction in your property's assessed value. It can save you hundreds of dollars in annual property taxes.
 - The annual property assessment will be capped, limiting annual assessment increases to no more than 3%.
 - There are additional tax exemptions for special categories including widow or widower, persons with a disability, persons aged 65 and over, and veterans.
 - Homestead property also has constitutional protection, protecting the property from the liens of certain creditors.





Foreign Investment

South Florida continues to attract foreign real estate investors from Mexico, Canada, South America, Russia, Europe, China and Israel. Miami luxury real estate purchases are dominated by foreign investors who see it as a safe investment with appreciation potential.

U.S. tax rules that apply to ownership and dispositions of U.S. real estate by foreign persons are different than those that apply to U.S. citizens and permanent residents. These transactions present many issues, including the following:

- **Form of Ownership.** Choice will depend on the tax treaty of the foreign purchaser's country. Many foreigners form limited liability companies for ownership of Florida real estate. However, there are times when a corporation or individual ownership may be preferable. Foreign investors should seek tax advice on their choice of entity.
- **FIRPTA Withholding Tax.** Foreign investors are subject to the Foreign Investment in Real Property Tax (FIRPTA) when they sell a property in the United States. Current FIRPTA rules require that 15% of

the gross sales price of the sale be withheld by the person conducting the sale (typically the title and closing agent) and paid to the IRS within 20 days of the closing. The IRS rules place the responsibility for ensuring the withholding tax is paid on the buyer. If the tax is not paid, the buyer may be held liable for the tax, penalties, and interest.

Withholding Certificate. A foreign seller may wish to file an application for a withholding certificate from the IRS if the tax on the seller's actual gain on the sale is less than the 15% FIRPTA withholding tax. In this case, the seller needs to work with an accountant to prepare and submit the application prior to completion of the closing. The 15% withholding tax will be escrowed until the determination from the IRS is received. In order to submit an application for a withholding tax certificate, the foreign owner must obtain a Tax Identification Number (TIN).

- **Possible FIRPTA Exemption.** If the sales price is under \$300,000, and the buyer will be occupying the property as his or her primary residence, there is an exemption from FIRPTA. The buyer must sign an affidavit certifying to these facts.
- **File Annual Tax Returns.** If the property generates rental income, the foreign owner will need to file annual tax returns. The owner will need a TIN to file the return.

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