

Real Estate Ownership: Alabama

by Adam J. Sigman, Dentons Sirote PC, with Practical Law Real Estate

Status: Law stated as of 08 Mar 2022 | Jurisdiction: Alabama, United States

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/1-527-1905

Request a free trial and demonstration at: us.practicallaw.tr.com/practical-law

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

Real estate and construction transactions are currently being impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws impacted by COVID-19, including eviction and foreclosure moratoriums, business closures, electronic signatures, recordings and notarization laws, and general crisis management guidance in handling real estate and construction matters, see [Real Estate Global Coronavirus Toolkit](#).

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 Alabama, unless the conveyance specifies otherwise, when real property is conveyed, granted, or demised, it is transferred as an absolute fee simple estate (Ala. Code § 35-4-2).

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

Alabama's real property code does not provide required language for deeds or conveyances. However, deeds and other instruments of conveyance typically use the words "grant," "bargain," "sell," or some combination of these words. The term "convey" is also often used; for example, "grant, bargain, sell, and convey."

These words must be construed, unless it otherwise clearly appears from the conveyance, to convey a fee simple estate. (Ala. Code § 35-4-271.)

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

Alabama law also permits life estates. However, they are rarely used.

Alabama law also permits easements and servitude.

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

Taxes on real property include the real property as well as the improvements on the real property. Real property in Alabama is appraised annually. There are three classes of real property:

- **Class I.** Public utilities are assessed at 30% of fair market value.
- **Class II.** All property not classified as Class I or Class III are assessed at 20% of fair market value.
- **Class III.** Owner occupied single-family dwellings, farms, pastures, timberlands, and historical properties are assessed at 10% of fair market value.

(Ala. Code § 40-8-1(a); [Alabama Department of Revenue \(ADR\): Property Tax, Property Tax Assessment.](#))

Exemptions

Real property owned by various charitable, educational, and public authorities are exempt from real property taxes. There are also exemptions for homestead, disability, senior citizens, and others. (Ala. Code §§ 40-9-1 to 40-9-39.)

Rate and Nature of Taxes

Taxes include a state, county, and municipal component. Though paid simultaneously, in some counties the county portion of the tax is paid in arrears while the municipal portion is paid in advance. The state portion of the tax is always paid in arrears.

The tax owed for real property is calculated by multiplying the following:

- The assessed value of the property.
- The tax rate set by various authorities where the real property is located (for example, the state, county, municipality, and school board district).

([ADR: Property Tax, Property Tax Assessment.](#))

Payment and Collection

In Alabama, the tax year runs from October 1 to the following September 30. Taxes are due and payable on October 1 but not considered late until January 1 of the following year. ([ADR: Property Tax, Frequently Asked Questions.](#))

Penalties for failure to pay include interest and fees. In addition, the property subject to the tax can be sold for taxes at a tax sale (Ala. Code § 40-10-1). Typically, tax sales are held in April of each year for the preceding year's unpaid taxes.

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.

The two most commonly used deeds in Alabama are:

- The statutory warranty deed (see Statutory Warranty Deed).
- The general warranty deed (see General Warranty Deed).

Alabama law also allows quitclaim deeds (see Quitclaim Deed).

Statutory Warranty Deed

In a statutory warranty deed, unless the deed expressly provides otherwise, the grantor only:

- Warrants title during the grantor's period of ownership.
- Assumes liability for any actions performed by the grantor that create a cloud on title.

(*St. Paul Title Ins. Corp. v. Owen*, 452 So. 2d 482, 485-87 (Ala. 1984).)

General Warranty Deed

In a general warranty deed, unless the deed expressly provides otherwise, the grantor warrants title for the grantor as well as the grantor's predecessors in title.

Quitclaim Deed

Alabama also allows conveyance by quitclaim deed where the deed only conveys the interest that the grantor has in the property at the time of the conveyance, whatever that may be, with no warranty.

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.

For information on Alabama's adoption of e-signatures/ e-recording and remote online notarization, see Question 21.

Officers

Under Alabama law, no specific officers are required to execute a deed. However, there is a broader issue of whether the party that the corporation or other entity is tendering has the requisite authority to sign and bind the entity. Therefore, the officer should be authorized by a proper resolution by the corporation or other entity to execute any deed as an authorized signatory.

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 foreign company is not required to register with the State of Alabama unless it is transacting business in Alabama. No certificate of registration is required to record a deed. (Ala. Code § 10A-1-7.01.)

Corporate Seal

No corporate seal is required.

Margins or Headings

Alabama law does not require any specific margin or heading sizes. However, there must be a block showing the name and address of the person who prepared the document at either at the beginning or end of the document (Ala. Code § 35-4-113).

Cover Page

No cover page is required. A real estate validation form is required (see Other Requirements).

Other Requirements

Under Alabama law, a deed, bill of sale, or other instrument conveying an interest in property must include a copy of the [Real Estate Sales Validation Form \(RT-1\)](#), which must include either:

- Proof of the actual purchase price, if the property is being sold.
- The actual value of the property (which may be evidenced by a licensed appraisal or the assessor's current market value for the property).

(Ala. Code § 40-22-1(c).)

Some counties require the validation form to be recorded with the instrument presented for recording (typically as the last page) while other counties only need to review the form.

While not required under Alabama law, it is common for a deed to state whether:

- The property is the homestead of the grantor.
- A mortgage is being simultaneously recorded.

If a notary acknowledgment is not included in the conveyance of the property, a witness must attest to the conveyance. If the party conveying cannot write, the conveyance of property must be attested by two witnesses who:

- Are able to write.
- Must write their own names as witnesses.

(Ala. Code § 35-4-20.)

7. Provide the statutory form of acknowledgment for:

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

Alabama law provides short forms of acknowledgment in Ala. Code § 35-4-29. These acknowledgment forms can be used for recording instruments within Alabama, regardless of whether the instruments are executed and notarized in Alabama or in another state.

Individual

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

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, [he/she] executed the same voluntarily on the day same bears date.

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL] [NOTARY SIGNATURE]
 Notary Public
 My Commission Expires:
 [DATE]

Corporation

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

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [SIGNATORY TITLE] of [CORPORATION NAME], a [DISTRICT OF CORPORATION

ORGANIZATION] corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, [he/she], as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL] [NOTARY SIGNATURE]
 Notary Public
 My Commission Expires:
 [DATE]

Limited Liability Company

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

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [SIGNATORY TITLE] of [LLC NAME], a [DISTRICT OF LLC ORGANIZATION] limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, [he/she], as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL] [NOTARY SIGNATURE]
 Notary Public
 My Commission Expires:
 [DATE]

Limited Partnership

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

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [SIGNATORY TITLE] of [LIMITED PARTNERSHIP NAME], a [DISTRICT OF LIMITED

PARTNERSHIP ORGANIZATION] limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, [he/she], as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL]

[NOTARY SIGNATURE] _____

Notary Public

My Commission Expires:
[DATE]

Trustee

STATE OF [STATE])

COUNTY OF [COUNTY])

)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that [SIGNATORY NAME] whose name as the [SIGNATORY TITLE] of [NAME OF ENTITY], is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, [he/she], as such [SIGNATORY TITLE] and with full authority, executed the same voluntarily for and as the act of said [ENTITY TYPE].

Given under my hand this [DATE] day of [MONTH], [YEAR].

[SEAL]

[NOTARY SIGNATURE] _____

Notary Public

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.

Under Alabama law, there is no requirement to disclose the beneficial owner of an entity that owns real property. The only name required is the entity owning the real property.

The Alabama secretary of state website maintains a [business entity database](#), which lists certain information for each business entity registered with the secretary of state.

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?

While not required under Alabama law, the filing of a certificate of merger or the conversion documents in the real estate records of the appropriate office of the judge of probate is a common practice. In addition, title companies typically require these filings before issuing an insurance policy.

An entity may file a certified copy of the certificate of merger or the documents required for a conversion in the real estate records in the office of the judge of probate in any county where any party to the merger or the converting organization owned real property, to be recorded without payment and without collection by the judge of probate of any deed or other transfer tax or fee. However, the judge of probate may collect the filing fees. (Ala. Code §§ 10A-1-8.02(i), 10A-5A-10.03(h), and 10A-5A-10.07(f).)

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 Alabama, transfers of real property are subject to a deed tax. The deed tax is \$0.50 for every \$500 (rounded up) of value of the property conveyed. If a mortgage is recorded simultaneously with the deed, a credit is provided by statute, where generally the deed tax due is calculated only on the value of the real property not securing the mortgage. (Ala. Code § 40-22-1(c).)

Returns

Alabama law does not require a special tax return for transfers of real property.

If the transferor is either not a resident of Alabama or a foreign entity, the purchaser must withhold 3% or 4% of the purchase price to pay certain taxes to the Alabama Department of Revenue (ADR) unless the transferor meets one of several exemptions (Ala. Code § 40-18-86(b)). The most common exemptions include that:

- The purchase price is less than \$300,000 ([ADR: Exemptions from Nonresident Withholding Requirement on Sales of Real Property](#)).
- The seller is not an Alabama resident but is deemed a resident because the seller:
 - filed Alabama tax returns for the preceding two years;
 - is and will continue to be an established business in Alabama and at the time of closing has real property remaining in Alabama of equal or greater value than the withholding tax liability;
 - will report the sale on its Alabama income tax return; and
 - is registered to do business in Alabama.

(Ala. Code § 40-18-86(a).)

The appropriate forms can be found on the ADR's [website](#).

Filing and Payment Deadlines

Alabama law requires the payment of transfer taxes before the deed is presented for recording (Ala. Code § 40-22-1(a)).

Custom

The parties to the transaction typically contract to determine who will pay the transfer taxes. Often, the purchaser pays these taxes.

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?

Section 40-22-1 of the Alabama Code can be interpreted to require transfer taxes for the indirect transfer of an ownership interest (for example, a sale of a limited liability company membership interest). However, this requirement typically only arises on the presentation of a conveyance for recording.

Recording Interests and Title Insurance

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

In Alabama, ownership interests are recorded in the office of the judge of probate in the county where the property is located (Ala. Code § 35-4-50). The ownership interests are indexed in the grantor/grantee index.

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

Title insurance companies typically conduct title searches in Alabama.

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 most commonly used form of title assurance in Alabama is a title insurance policy. Title opinions or abstracts are rarely used, usually in small rural areas and for minerals or mining rights.

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?

In Alabama, title insurance charges are based on rates filed by the title insurers with the State of Alabama. Title insurance rates are not negotiable.

Reissue credits are offered on owner's policies only when a prior title insurance policy is physically furnished. The prior policy must include the policy jacket and all schedules. A reissue credit applies up to the face amount of the previous policy.

Title insurance rates can be found on the [Alabama Department of Insurance's website](#), which uses the NAIC System for Electronic Rate and Form Filing Access (SERFF) interface.

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

The following is a list of title endorsements available for an Alabama owner's title insurance policy:

- American Land Title Association (ALTA) 3-06, ALTA 3.1-06, or ALTA 3.2-06 (Zoning).
- ALTA 8.2-06 (Commercial Environmental Protection Lien).
- ALTA 9.1-06, ALTA 9.2-06, ALTA 9.8-06, or ALTA 9.9-06 (Comprehensive).
- ALTA 13-06 (Leasehold).
- ALTA 17-06 (Access and Entry).
- ALTA 17.1-06 (Indirect Access and Entry).
- ALTA 17.2-06 (Utility Access).
- ALTA 18-06 (Single Tax Parcel).
- ALTA 18.1-06 (Multiple Tax Parcel - Easements).
- ALTA 18.2-06 (Multiple Tax Parcel).
- ALTA 19-06 (Contiguity – Multiple Parcels).
- ALTA 19.1-06 (Contiguity – Single Parcel).
- ALTA 22-06 (Location).
- ALTA 22.1-06 (Location and Map).
- ALTA 25-06 (Same as Survey).
- ALTA 25.1-06 (Same as Portion of Survey).
- ALTA 26-06 (Subdivision).
- ALTA 28-06 (Easement – Damage or Enforced Removal).
- ALTA 28.1-06 (Encroachments – Boundaries and Easements).
- ALTA 28.2-06 (Encroachments – Boundaries and Easements – Described Improvements).
- ALTA 28.3-06 (Encroachments – Boundaries and Easements – Described Improvements and Land Under Development).
- ALTA 34-06 (Identified Risk).
- ALTA 35-06 (Minerals and Other Subsurface Substances – Buildings).
- ALTA 35.1-06 (Minerals and Other Subsurface Substances – Improvements).
- ALTA 35.2-06 (Minerals and Other Subsurface Substances – Described Improvements).
- ALTA 35.3-06 (Minerals and Other Subsurface Substances – Land Under Development).
- ALTA 36.06 (Energy Project – Leasehold or Easement).
- ALTA 36.2-06 (Energy Project – Leasehold Owners).
- ALTA 36.4-06 (Energy Project – Covenants, Conditions, and Restrictions – Land Under Development).
- ALTA 36.7-06 (Energy Project – Fee Estate).
- ALTA 39-06 (Policy Authentication).
- ALTA 40-06 (Tax Credit).
- ALTA 40.1-06 (Tax Credit Defined Amount).
- ALTA 41-06 (Water – Buildings).

- ALTA 41.1-06 (Water – Improvements).
- ALTA 41.2-06 (Water – Described Improvements).
- ALTA 41.3-06 (Water – Land Under Development).

ALTA's forms are available on ALTA's [website](#) (subscription required).

Available endorsements can be found on the Alabama Department of Insurance's website, which uses the NAIC System for Electronic Rate and Form Filing Access (SERFF) interface (see [Alabama Department of Insurance: Public Online Search for SERFF's Rate and Form Submission](#); see also [SERFF Filing Access](#)).

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 Alabama, if the contract is silent, the risk of loss during the contract period is typically on the seller.

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 Alabama. Limited liability companies are widely used.

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

Alabama law does not prohibit real estate investment trusts (REITs).

Regulation and Taxation

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

In Alabama, the most significant variation in taxation on real property between districts are municipal and school taxes.

Electronic Signatures, Recording, and Notarization Laws

21. Has your state adopted laws permitting electronic signatures, electronic recording, and remote notarization? In particular, include information on whether:

- The Uniform Electronic Transactions Act (UETA) or another law giving electronic signatures legal effect has been adopted.
- The Uniform Real Property Electronic Recording Act (URPERA) or another law permitting the recording of electronic signatures has been adopted.
- The Revised Uniform Law on Notarial Acts (RULONA) or another law permitting remote online notarization (RON) has been permanently adopted and/or temporary remote online notarization is permitted on an emergency basis due to the coronavirus pandemic.

Note that despite adoption of the applicable electronic laws referred to below, Alabama law may not require the transaction parties or recording offices to accept documents executed or notarized electronically. Before relying on any of the below electronic laws for a particular transaction, counsel should confirm (as applicable) that:

- All parties to the transaction agree to accept electronic signatures and/or remotely notarized documents and intend to be bound by them.
- The applicable recording office accepts electronic signatures and remotely notarized documents for recording.

Electronic Signatures

Alabama has adopted the UETA (Ala. Code §§ 8-1A-1 to 8-1A-20).

Electronic Recording

Alabama has adopted the URPERA (Ala. Code §§ 35-4-120 to 35-4-127).

Remote Online Notarization

Alabama has not adopted RON.

However, Alabama does allow RON on an emergency basis due to the 2019 novel coronavirus disease (COVID-19) pandemic for the duration of the public health emergency unless rescinded or extended by proclamation (see [State of Alabama Fourth Proclamation by the Governor](#) and [State of Alabama Fifth Proclamation by the Governor](#)).

There are detailed requirements for performing RON in Alabama (for example, see Question 6). Reference should

be made to the statute, any applicable emergency orders, and any rules promulgated by the secretary of state or other state authority to understand all RON requirements and conditions.

For a state-by-state chart covering key provisions of RON laws, emergency orders permitting RON during the COVID-19 pandemic, and pending electronic recording and RON laws, see [Electronic Signatures, Recording, and Notarization Laws for Real Estate Transactions: State Comparison Chart](#).

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.