

# Washington, D.C. Real Estate Practices



## Closing Costs — Payment Splits

The buyer generally pays closing costs, title insurance premium and recordation tax. The seller generally pays the transfer tax. Payment of both the recordation tax and the transfer tax is negotiable between the buyer and seller. On construction loan deeds of trust, the buyer or borrower generally pays the recording tax.

## Closing Customs

Real estate closings are conducted by local attorneys and title insurance companies or their agents.

## Document of Conveyance

Conveyance normally is by special warranty deed.



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### Document of Encumbrance

The deed of trust, containing a private power of sale, is the security instrument. Mortgages are permitted by law but rarely used.

### Estates

From January 1, 1980 through the present, three different laws have been in effect that govern probate issues in the District of Columbia. It is often advisable to consult DC counsel regarding estate transactions.

To insure title to real property out of a D.C. estate for a decedent whose date of death is on or after July 1, 1995, the following issues must be reviewed:

- (1) a personal representative must be appointed and if the decedent died testate, the will must be probated;
- (2) in most circumstances, the personal representative does not need a court order to convey title to real property (termed an "unsupervised administration");
- (3) if the property is being transferred to a bona fide purchaser for value in an arm's length transaction, claims of creditors, who may file claims within six months from the first date of publication for creditors, will not attach as liens to any real property in the estate;
- (4) a deed of distribution to the heirs or devisees of the decedent and/or a deed from a personal representative in a foreign estate may not be insured until the six month period for creditors and interested persons has run, and all claims have been satisfactorily resolved; and
- (5) federal and D.C. estate tax issues must be addressed.

### Foreclosure Procedures

On November 17, 2010, the D.C. Council enacted emergency legislation affecting foreclosures of owner-occupied residential property. The emergency legislation required mortgage lenders to provide homeowners with a notice of default on residential mortgage and to provide homeowners with the right to engage in mediation prior to initiating a non-judicial foreclosure on residential mortgages. Permanent identical legislation (DC Act 18-0635) became law on March 12, 2011.

A valid foreclosure sale must be conducted in strict compliance with the Act and implementing regulations; a failure of compliance will operate to void the sale. The regulatory scheme is form-based and use of DISB forms is mandatory. See Standard 2013-003 for details.

Many D.C. foreclosures are now being conducted under court supervision in order to bring more certainty to the foreclosure process. Our title insurance requirement for judicial foreclosures include the following:

- (1) There should be no defect which would cause title to be uninsurable under normal industry standards. Any error in the legal description or similar problem requiring correction must be addressed in a separate



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count to reform the instrument to resolve the issue.

(2) A Lis Pendens must be filed in the District of Columbia land records contemporaneously with the filing of the action.

(3) The action must contain satisfactory proof that the foreclosing lender is the owner of the note and has possession of the note. This requirement may be satisfied by verification of a recorded chain of assignments as well as a true copy of the properly endorsed note secured by the Deed of Trust being foreclosed upon.

(4) The action should explicitly proceed under DC Code §42-816 as a judicial foreclosure with all proper federal compliance completed including but not limited to: Servicemembers Civil Relief Act, and Bankruptcy searches.

(5) If personal service of process is not achieved, then a court order approving the manner and sufficiency of process must be included in the file.

(6) The Decree of Sale must contain language excluding the operation of the nonjudicial statutes in form and substance similar to the following: The Court is issuing a Decree and ordering the sale of the property under DC Code 42-816, not under the power of sale provisions provided in the Deed of Trust. Consequently the provisions of 42-815 (b) (2) and 42-815.02 (requiring and obtaining a mediation certificate) do not apply to this action.

(7) All terms and conditions of the Decree of Sale must be complied with.

(8) The property cannot be under the control of the Bankruptcy Court or Trustee at the time of sale or an order granting relief from stay must have been entered in the bankruptcy proceeding.

(9) The Superior Court of the District of Columbia must ratify the sale.

(10) A final order must have been entered in the judicial foreclosure process and the applicable appeal time must have elapsed without further filings.

(11) The Decree of Sale or Order of Ratification should be formatted to permit indexing and recordation among the land records of the District and should be recorded prior to requesting a commitment.

(12) The Trustee's Deed must be timely recorded in compliance with the Court's directives.

(13) The property must be vacant as supported by visual inspection and verification accompanied by affidavit.



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(14) The post-foreclosure purchase price should not exceed the foreclosure price by more than fifteen percent (15%).

In DC, if the borrower files bankruptcy after the sale, the foreclosure Trustees must apply to the bankruptcy court for a lift-stay order allowing them to record the Trustees' Deed.

### Leasehold Tax

A lease for more than 30 years shall be taxable at the standard Recordation tax and Transfer tax rate, each at 1.45% of stated consideration or, without stated consideration, as calculated by the Recorder of Deeds. For the purpose of determining the length of a lease term, options to extend shall be included.

### Miscellaneous Information

The D.C. Recorder of Deeds has an excellent webpage within the Office of Tax and Revenue website which provides general instructions regarding recording requirements, all forms necessary to recording, and updated information regarding recording and recordation and transfer tax exemption practices: <http://otr.cfo.dc.gov/service/otr-recorder-deeds>

The webpage should be consulted regularly for guidance and updated information. The forms included on the webpage must be used for any document to be recorded in the District of Columbia.

Recording fees for documents recorded in the Land Records include a statutory surcharge fee of \$6.50 per document in addition to the fees shown below:

\$150.00 for the recordation of any and all deeds of trust, mortgages, modifications to deeds of trust, amendments to deeds of trust, or amended and restated deeds of trust;

\$25.00 for the recordation of all other documents

Do not mail recordings to the Office of the Recorder of Deeds, which acknowledges significant delays in processing mailed recordings. For commercial transactions, contact the First American office located in the District of Columbia for recording services and information by calling (202) 530-1200.

### Mortgage Tax

Construction Loan Deeds of Trust, Refinance and Money loaned secured on non-residential property are subject to the Recordation tax at a rate of 1.45% of loan amount. The Combined Real Property Deed Recordation Tax and Real Property



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Transfer Tax Return Form FP 7/C must accompany any Deed of Trust. Properly drafted Purchase Money Deeds of Trust are exempt from Recordation tax, to the extent of funds actually used for purchasing the property. Any excess funds are subject to Recordation tax.

Residential refinance Deeds of Trust are usually exempt from recordation tax if the residential property is five (5) units or less and the "Class I" affidavit is attached to the Deed of Trust. Claim for exemption from Real Property Deed Recordation Tax or Real Property Transfer Tax is now included in the form FP 7/C, and the appropriate exemption number must be selected from the list of Exemptions (ROD 7 and 8).

NOTE: Commercial Deeds of Trust shall be taxed at a rate of 1.45% of the total amount of debt incurred which is secured by the interest in real property; provided, that if the existing debt is refinanced, the rate shall be applied only to the principal amount of the new debt in excess of the principal balance due on the existing debt that was previously subject to Recordation tax, which tax on the existing debt was timely and properly paid, or exempt from taxation (cf. DC Code §42-1103 (a) (3)); as amended by Fiscal Year 2013 Budget Support Act of 2012, Subtitle L, title VII D.C. Act 19-385. The Recorder of Deeds through the Office of Tax and Revenue may post Rules and Notices that supplement these processes, and the requirements for supporting documentation are very specific. Please contact The Recorder of Deeds webpage or the First American office located in the District of Columbia to obtain the most current information.

### Notary Requirements

The Uniform Notarial Act was adopted in the District of Columbia in 1991, D.C. Code §§ 42-141 et seq.

### Real Estate Taxes

Real property tax bill payments are due twice a year, payable in arrears, as follows:

Billing Period	Due Date:
1st Half: October 1 - March 31	March 31
2nd Half: April 1 - September 30	September 15

In every real estate transaction in the District of Columbia, you should also obtain more detailed and specific real estate tax information by searching the Real Property Assessment Database, which now allows you to download and print current tax bills:

[Search the Real Property Assessment Database](#)

Please note that this database is often reliable, but that DC deems tax information accurate only as represented upon a written [Tax Certificate](#) issued by the Office of Tax and Revenue.

Please also note that Tax Certificates specifically exclude sums due for unpaid water and sewer bills, which constitute a



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lien upon real property. Similar to the Tax Certificate, you should obtain an estoppel letter from DC Water and Sewer Administration for any unpaid water and sewer bills.

### Tenant Opportunity to Purchase Act

The Tenant Opportunity to Purchase Act (TOPA) affects all sales of tenant-occupied residential real property in the District of Columbia, and specific written approval by DC Counsel is required all TOPA transactions. Please see Standard 2012-001 for details and required documentation for review.

### Title Insurance Forms

The Department of Insurance, Securities and Banking of the District of Columbia (DISB) requires that all policy forms covering title risks in the District be filed with DISB. Forms required to be filed and approved include title insurance policies, including standard form endorsements, title insurance commitments issued prior to the issuance of a title insurance policy; and closing protection letters. Filed and approved forms are available through FAST and AgentNet. The following policy forms are available:

ALTA Loan Policy (6-17-06)

ALTA Owners Policy (6-17-06)

ALTA Short Form Residential Loan Policy (6-17-06)

ALTA Residential Limited Coverage Jr Loan Policy (10-19-96)

ALTA Expanded Coverage (EAGLE) Loan Policy (10-13-01)

ALTA Short Form Residential Loan Policy (10-17-92) Eagle Protection Added (2-10-97)

ALTA Homeowners (EAGLE) Policy (10-17-98)

ALTA U.S. Policy (9-28-91)

### Title Insurance Rates

A title insurer or title insurance agent must charge title insurance premium rates as approved and regulated by DISB of the District of Columbia after January 1, 2011 in accordance with the premium rate schedule and manual filed by the title insurer. Only filed and approved rates may be charged. Please consult the D.C. Rate Manual effective April 1, 2013 for our approved rates.

Original Title Insurance Rates for Owner's or Leasehold per \$1,000 of coverage:

Up to \$250,000 of liability written	\$5.70
Over \$250,000 and up to \$500,000	\$5.10
Over \$500,000 and up to \$1,000,000	\$4.50
Over \$1,000,000 and up to \$5,000,000	\$3.90
Over \$5,000,000 and up to \$15,000,000	\$1.05
Over \$15,000,000, add	.90



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Original Title Insurance Rates for Owner's or Leasehold per \$1,000 of coverage:

Up to \$250,000 of liability written	\$4.70
Over \$250,000 and up to \$500,000	\$3.90
Over \$500,000 and up to \$1,000,000	\$3.30
Over \$1,000,000 and up to \$5,000,000	\$2.70
Over \$5,000,000 and up to \$15,000,000	.85
Over \$15,000,000, add	.70

Insured Closing Letter – The filed form of Insured Closing Letter must be used and the \$50.00 filed rate must be collected at closing and shown on the HUD-1 Settlement Statement. The \$50.00 fee is payable to First American Title and should be remitted along with a copy of the title policy and ICL to First American Title, ATTN: Tien Luc, 14150 Newbrook Drive, Suite 250, Chantilly, VA 20151

Please contact your First American representative or the First American office in the District of Columbia, or see our Rate Manual for more information and discount rates that may be applicable for reissue and extension of owner policies; refinance, extension, modification, and assignment of loan policies, and simultaneous issuance of owner and lender policies. View Directory for District of Columbia.

First American Comprehensive Calculator may be used as a guide and should be verified with the local office - [FA Comprehensive Calculator](#)

### Transfer Tax and Recordation Tax

Conveyances by deed and by transfer of economic interests are subject to Transfer and Recordation Tax.

Transfer tax is computed at 1.1 percent of consideration, and Recordation tax is calculated at 1.1 percent of consideration if the consideration is LESS THAN \$250,000.00 AND THE PROPERTY QUALIFIES AS "HOMESTEAD" PROPERTY as established by filing the Application for Homestead Deduction and Senior Citizen Tax Relief along with the Deed.

If the consideration is greater than \$250,000.00 and/or does not qualify as a "homestead", the Transfer tax is calculated at 1.45 percent of consideration, and Recordation tax is calculated at 1.45 percent of consideration. If consideration is less than assessed value, the DC Recorder of Deeds may reject recording, and require payment of Recordation and Transfer tax on the assessed value as shown in the DC Tax Assessment Records.

### WASA Certificate Request Letter

<https://ul.firstam.com/Templates/document.aspx?id=17464>

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*All underlined documents are searchable within the system.*

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