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REAL ESTATE INDUSTRY UPDATE

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New Filing Requirement for Mergers and Certain Ownership Changes

Pursuant to new Florida Statutes Section 193.1556, the State now requires the filing of a **Department of Revenue Form DR-430** where there is a change of ownership or control of non-homestead property where no deed is recorded. The DR-430 form must be filed with the property appraiser for the county where the real estate is located within 60 days of the change of ownership. The new filing requirement means that LLC transfers of membership interests and corporate mergers that formerly escaped review by the county property appraiser must now be disclosed. This could subject the property to a higher valuation for ad valorem tax purposes. The burden of filing the form is placed on the new owner or controlling person.

The Department of Revenue deems the following to be a "change of transfer or control" of an entity:

- A change of ownership pursuant to a sale where no deed is recorded.
- A merger.
- A foreclosure where no deed is recorded.
- A transfer of more than 50% of the legal or beneficial title to any person or entity.
- A transfer of more than 50% of the membership or stock interests of an entity that owned the property.
- A change in control of the directors of a corporation, general partner, managing member of an LLC, or other controlling person to a successor, where there is an accompanying change in majority control.
- Under a lease, contract or other arrangement when control is transferred to another person or entity.

Failure to notify the property appraiser within 60 days of the change of control may subject the new owner to any taxes that were avoided plus interest and penalties.

Please contact us if you need assistance with complying with this new statute.

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- Department of Revenue (DR)-219 Forms are no longer required to be filed with deeds and easements in Florida. However, you must still pay any required

documentary stamp taxes and intangible taxes on such instruments and place language on the face of the instrument regarding the payment of such taxes.

- In Florida, for deeds and easements to be effective when signed by a corporation, the following rules apply:

Signer	Witnesses Required?	Seal Required?	Notary Required?	Corporate Resolution Required to be filed of record?	Florida Statutes Section
President Vice President, CEO (Note: an Assistant Vice President is not a Vice President within the meaning of 692.01, Florida Statutes)	2 witnesses are required unless seal is present	Not required unless you don't have 2 witnesses	Yes	No	692.01
Any Other Officer	2 witnesses are required	Not required	Yes	Yes	689.01

The recent 5th DCA Case of *DGG Development Corp. v. Estate of Capponi* (983 So.2d 1232, Fla. 5th DCA 2008), held that a deed executed by the Secretary/Treasurer of a corporation in the presence of two witnesses, but without the corporate seal and without a Corporate Resolution from the board of directors was not effective to convey title to real property.

Note: There are additional requirements if the entity signing is a partnership, limited liability company, trust, or other business entity.

In Florida, no witnesses are required for Mortgages, Assignment of Mortgages, Modifications of Mortgages, Satisfactions of Mortgages and Partial Releases; however, witnesses are recommended in case authenticity is questioned in the future.

If you have any questions, please contact Paul S. Quinn, Jr., a shareholder in the Real Estate Department in the Orlando office.

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