

When Home Sales Trigger Sales Tax Law

If your residential transaction includes tangible personal property, sales tax may be due.

Are you the selling agent of a fully furnished home? If so, that sale may be subject to sales tax, which your broker is obligated to collect. While the sale of real property in Florida is not subject to sales tax, a sale that includes tangible personal property may be. If sales tax is due, the Florida Department of Revenue (DOR) requires the seller's broker to register as a dealer and collect and remit the tax.

Whether sales tax is owed depends on how the transaction is structured. Sales tax is due when the personal property items, such as furniture, artwork, lamps and area rugs, are listed separately in the purchase and sale contract, bill of sale or other document. Let's look at the accompanying hypothetical transactions where the terms of the purchase and sale agreement include the sales price for the real property and tangible personal property:

A real estate broker is obligated to collect sales tax only when the tangible personal property is described and

priced separately, as in Example 3. In Example 2, the items are not individually described. The total sales tax collected must include both the state 6 percent sales tax and the applicable discretionary sales surtax, if any, levied by the county where the property is located.

There are exceptions, such as the sale of a business that includes tangible personal property considered the normal stock in trade of the business. A broker is not required to collect the tax if, prior to the sale of such property, the buyer has registered as a dealer and extended to the seller a resale certificate as described in the DOR's rules.

For the broker, failure to register as a dealer, collect and remit the appropriate tax can result in the broker being liable for the tax payment and subject to criminal prosecution. In real estate transactions, it's often the closing agent who collects and remits the tax to the DOR. In this situation, the brokers should obtain written proof of payment in the event they are audited by the DOR.

To learn more or to register as a dealer, visit the DOR's website at myflorida.com/dor.

EXAMPLE 1

Real property, furniture and fixtures \$100,000

EXAMPLE 2

Real property \$98,000
Furniture and fixtures \$2,000
..... \$100,000

EXAMPLE 3

Real property \$98,000
Dining room table and four chairs \$500
Sofa \$1,000
Television \$500
..... \$100,000

COMPLAINTS

A listing broker informed me that she will not deliver my offer. She claims that the seller gave her written instruction to withhold offers like the one my buyer is submitting. May I demand to see a copy of this written instruction?

You may ask for a copy, but the listing broker is not obligated to provide it. If you suspect that a listing broker is breaching Section 475.278, Florida Statutes, in failing to deliver the offer without written instruction to withhold the offer, you may file a complaint against the listing broker using the RE 2200 Uniform Complaint Form. An investigator for the Florida Department of Business & Professional Regulation will then be able to demand the evidence necessary to determine if a violation has occurred.

DISCLOSURE

What are the minimum facts that a seller of residential property is required to disclose to a buyer in Florida when completing a seller's disclosure form?

The Florida Supreme Court held, in *Johnson vs. Davis*, that a home seller who knows of facts materially affecting the value of the property, which are not readily observable and are not known to the buyer, is under a duty to disclose them.