

Chapter XIII.

Acquisition of Real Property

A. Introduction: The following descriptions referencing statutory requirements, procedures, and limitations, are subject to the individual Charter provisions contained in Municipal Charters and the Charters of Charter Counties, to the extent they alter the general statutory scheme.

B. Voluntary Acquisitions

1. Transactional, Arms Length Purchases

a. Counties: Acquiring property is an inherent home rule power of counties, but the purchase may be authorized only upon approval of the board of county commissioners. §§ 125.01(1)(c), 125.01(1)(f), 125.01(1)(aa), 125.01(3), Fla. Stat. Other acquisition procedures pursuant to individual home rule charters adopted pursuant to Article VIII, Florida Constitution, under Chapter 125, Florida Statutes, or by Special Act.

(1) Acquisition Limitations Dictated By Funding Source:

- (a) Ad Valorem Taxes: Art. VII, § 9, Fla. Const.; Chapter 125
- (b) Tourist Development Taxes: § 125.0104, Fla. Stat.
- (c) Tourist Impact Taxes: § 125.0108, Fla. Stat.
- (d) Infrastructure Surtax: § 212.055, Fla. Stat.
- (e) General Obligation Bonds: § 125.013, Fla. Stat; Art. VII, § 12, Fla. Const.
- (f) Grants: Limitations dictated by the individual federal, state, or private non-for-profit grant.

(2) Acquisition Procedures:

- (a) Purchase: § 125.355(a), all appraisals, offers and counteroffers must be in writing. Temporary exemption from § 119.07(1) available pursuant to statutory compliance. § 125.355(b), if exemption

under subsection (a) is utilized, one appraisal required for acquisition of \$500,000 or less, two for acquisition of more than \$500,000. If purchase price exceeds the appraisal, or average of two appraisals, as applicable, purchase may proceed only upon extraordinary vote of board. § 125.355(c) permits alternate procedure consistent with Chapter 119 if exemption under subsection (a) is not utilized.

- (b) Exchange: § 125.37, Fla. Stat., authorizes an exchange of county property not needed for county purposes for property, the acquisition of which is in the best interest of the county, if (i) the terms and conditions of the exchange are published in a Chapter 50 publication at least twice for at least 2 weeks, before the adoption of a resolution authorizing the exchange.

b. Municipalities: Acquiring property is an inherent home rule power of municipalities unless limited by Charter, general, or special law. §§ 166.021, Fla. Stat., Art. VIII § 2, Fla. Const.

(1) Acquisition Limitations Dictated By Funding Source:

- (a) Ad Valorem Taxes: Art. VII, § 9, Fla. Const.; Art. VIII, § 2(b), Fla. Const., Chapter 166
- (b) Infrastructure Surtax: § 212.055, Fla. Stat.
- (c) General Obligation and Other Bonds: §§ 166.101 - 166.141, Fla. Stat; Art. VII, § 12, Fla. Const.
- (d) Grants: Limitations dictated by the individual federal, state, or private non-for-profit grant.

(2) Acquisition Procedures:

- (a) Purchase: § 166.045(a), all appraisals, offers and counteroffers must be in writing. Temporary exemption from § 119.07(1) available pursuant to statutory compliance. § 166.045(b), if exemption under subsection (a) is utilized, one appraisal required for acquisition of \$500,000 or less, two for acquisition of more than \$500,000. If purchase price exceeds the appraisal, or average of two

appraisals, as applicable, purchase may precede only upon extraordinary vote of board or council. § 166.045(c) permits alternate procedure consistent with Chapter 119 if exemption under subsection (a) is not utilized.

c. Special Districts: Acquiring property will generally be authorized, pursuant to various statutory limitations, Chapters 189 and 190.

d. All Political Subdivisions:

1. Disclosure of Beneficial Interests Forms: § 286.23, Fla. Stat.
2. Escrow Tax Payments: § 196.295 requires (a) the taxpayer to place in escrow with the County Tax Collector prorated taxes based on the current years assessment and mileage rates for any closing scheduled between January 1 and November 1, or (b) after November 1, taxes must be paid in full by the taxpayer.
3. Radon Gas Notification on Real Estate Documents: § 404.056(5), Fla. Stat.
4. Documentary Stamps: § 201.01, Fla. Stat., all of the United States, the State of Florida, and political subdivisions of the State are exempt from the payment of documentary stamp taxes (for both purchases and sales), and the taxes “shall be paid by a nonexempt party to the document.” If both parties are exempt, the entire transaction is exempted.
5. Formal acquisition decisions subject to the requirements of Chapter 286, Fla. Stat.
6. All acquisitions should be subject to the customary real estate practices in that the buyer/local government should consider and research all environmental, zoning, and land use issues, and perform such due diligence (e.g. surveys, environmental testing, title search) to protect the acquiring governmental entity. Procurement of title insurance is generally recommended.

2. **Donations**: Apparently, there are no statutes governing donations of real property to local governments, but local governments ought to encourage pure donations, or acquisitions for reduced consideration, and

in turn formally recognize the full or partial donations. In these instances, most local governments will employ most of their established procedures for acquisition, with reduced formality, and may sign an Internal Revenue Service Form 8283 acknowledging the full or partial donation. It is preferable to have a process to formally accept and acknowledge the donation of property. This will enable a government to assert a defense in the event of an attempted conveyance of unwanted property without the knowledge or consent of the government. However, the provisions noted in subparagraphs 1.a.(2)(a), 1.b.(2)(a) and 1.d. will still apply.

3. Transactional, Arms Length Leases

- a. Counties: Acquiring property by lease is an inherent home rule power of counties, but may be entered into only upon approval by the board of county commissioners. §§ 125.01(1)(c), 125.031, Fla. Stat.
 - (1) Leases and lease-purchases are limited to 30 year terms, with rent payable from current or other legally available funds. § 125.031, Fla. Stat.
 - (2) Rental payments on leases exceeding 60-month terms are payable only from non-ad valorem funding sources. § 125.031, Fla. Stat.

- b. Municipalities: Leasing property is an inherent home rule power of municipalities unless limited by Charter, general, or special law. §§ 166.021, Fla. Stat., Art. VIII § 2, Fla. Const.

- c. Special Districts: Leasing property will generally be authorized, pursuant to various statutory limitations, Chapters 189 and 190.

- d. All Political Subdivisions:
 - 1. Disclosure of Beneficial Interests Forms: § 286.23, Fla. Stat.
 - 2. Radon Gas Notification on Real Estate Documents: § 404.056(5), Fla. Stat.
 - 3. Because each fiscal year stands on its own, each lease should contain a “fiscal non-funding” provision allowing the local government to terminate the contract without penalty or expense to the government prior to the

commencement of any fiscal year for which lease or other required payments are not budgeted and appropriated. e.g. §§ 129.07, 129.08, 166.241, Fla. Stat.

4. The act of entering into a lease should be subject to the customary real estate practices in that the lessee/local government should consider and research all environmental, zoning, and land use issues, and perform such due diligence to protect the acquiring governmental entity. For instance, where a lease would impose liability on the lessee/local governmental for environmental testing, conducting a baseline environmental assessment is generally recommended.

C. Involuntary Acquisitions

1. **Eminent Domain:** See Chapter XII above.

D. Statutory Acquisitions

1. Escheat

- a. Counties: Properties listed on the Lands Available for Taxes List, § 197.502(7), Fla. Stat., which are not redeemed or purchased within three (3) years from when the respective property was offered for tax deed sale, shall escheat to the county in which the property is located. § 197.502(8). [N.B. Properties placed on the Lands Available for Taxes List which were brought to tax deed sale on county-held certificates sold prior to October 1, 2001, will escheat only after seven (7) years from when the respective property was offered for tax deed sale. § 17, Ch. 2001-252, Laws of Florida.]
 - b. Municipalities: Properties which escheat to a county not retained for enumerated statutory purposes, and which are located within an incorporated municipality, shall be deeded to the municipality free and clear of county liens. § 197.592(3), Fla. Stat.
2. **Roads Presumed Dedicated:** Property on which a road constructed and then continuously maintained for at least 4 years by a county, municipality or the Department of Transportation is located, is deemed to be dedicated to that county, municipality or the Department of Transportation. § 95.361(1), Fla. Stat. Alternatively, property on which a road is constructed by a nongovernmental entity, but is maintained or repaired for at least 7 years by a county, municipality or the Department of

Transportation is located, is deemed to be dedicated to that county, municipality or the Department of Transportation. § 95.361(2), Fla. Stat. A map filed with the clerk of the court with required detail shall be prima facie evidence of ownership, § 95.361(3), Fla. Stat., subject to a statutory challenge period for property acquired under subsection (2), § 95.361(4), Fla. Stat.

See Underwood v. Columbia County, 868 So. 2d 1225, (Fla. 1st DCA 2004), where County prevailed in a quiet title action on land part of a maintained roadway, where the trial court found, and the appellate court agreed, that the land had been dedicated to public use under section 95.361, Florida Statutes. However, on appeal the First District reversed the award of value of the land to the former owner, and the aware of attorneys fees, saying that “[u]nlike a takings case, . . . [n]othing in the dedication statutes, *section 95.361*, authorizes a court to award a property owner compensation for dedicated lands. No other statute of which we are award provides for such an award either. . . . Nor is there a statutory basis for an attorney’s fee award to the owner of dedicated property.” Id. at 1227.

E. Hybrid Acquisitions

- 1. Purchases At Foreclosure Sales:** Subject to individual limitations in the respective charters, special acts, or other formations documents, local government entities should be free to bid for the acquisition of properties at foreclosure sales.¹
- 2. Purchases At Tax Deed Sales:** Subject to individual limitations in the respective charters, special acts, or other formations documents, local government entities should be free to bid for the acquisition of properties at tax deed sales.¹
- 3. Purchases From Lands Available For Taxes List:** With prior appropriate authority from the governing body, a local government should be free to purchase property listed on the Lands Available for Taxes list under § 197.502(7), (8), Fla. Stat., prior to the time of escheat.

After County declined to purchase property on the Lands Available for Taxes list under section 197.502(7), Clerk of Court was free under the statute to employ a procedure to award the sale of the property to the first

¹ By way of example, Pinellas County has adopted a procedure for the Board of County Commissioners to authorize staff to bid at foreclosure sales, tax deed sales, or other auctions. Staff is obligated to perform most of the Board’s mandated homework and due diligence, and then the County Administrator requests permission at a Board meeting to authorize specific staff to bid on a specific property at a maximum price. Chapter 286 eliminates any element of confidentiality (waiving any element of surprise at an auction), but adopting this mechanism opens opportunities to acquire land not otherwise available to the County.

application received, where the “opening bid” amount was calculated after receipt of the application, and a second-in-time application was submitted with the full opening bid amount, before the first applicant remitted payment. Perdido Bay Partnership v. Warner, 837 So. 2d 1154 (Fla. 1st DCA 2003).

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