



Members Only

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Land Conveyance Bills*

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As a general rule, state agencies do not own the real estate under their jurisdiction; the real estate is owned by the state. Therefore, most agencies do not have the authority to convey the real estate. A land conveyance bill introduced in the Ohio General Assembly proposes uncodified law to authorize a state official, usually the Governor, to convey state-owned real estate specified in the bill. A land conveyance bill resembles a contract to purchase real estate in that it specifies the terms of a subsequent conveyance. This informational brief sets forth the manner in which land conveyance bills are drafted for introduction by a member of the General Assembly.

Information needed to draft a land conveyance bill

To draft a land conveyance bill, usually five questions need to be answered. Several interested parties often are involved, and they usually are available to provide a member considering sponsoring a land conveyance bill with the information relating to these questions.

In whose name is the real estate held?

Generally, real estate is held in the name of the state and under the jurisdiction of a state agency. Sometimes, however, this is not the case. The current deed reveals who owns the real estate. Knowing the identity of the current owner enables the member and the drafter of the conveyance bill to do several things:

- ◆ Decide whether a land conveyance bill is needed. Some state agencies have independent statutory authority to convey real estate.¹
- ◆ Enable the member to decide who should be given authorization to convey the real estate.
- ◆ Enable the member to check with the state agency having jurisdiction over the real estate to determine if the agency will agree to the conveyance.

A land conveyance bill usually is needed to transfer real estate, because most state agencies do not own real estate.

A review of the deed will determine if real estate is held in the name of the state or a state agency.

* This *Members Only* brief is an update of an earlier brief on this subject dated January 31, 1997 (Volume 122 Issue 1).



A land conveyance bill can convey real estate to a person or an entity, authorize sale at auction or through a real estate broker, or use another method of conveyance.

A land conveyance bill should contain a legal description of the real estate.

The consideration for the conveyance should be included in the bill.

To whom will the real estate be conveyed?

Often, the person or entity to receive the real estate is specified in the bill, but this is not the only option. The land conveyance bill also can provide that the real estate be sold at auction, provide that the real estate be sold through a real estate broker, or provide another procedure by which the person to receive the real estate will be determined.

What is the real estate to be conveyed?

Usually the bill includes a legal description of the real estate to be conveyed. If no legal description is included, it is unclear what is to be conveyed. If a legal description is not available, the bill can contain a general description of the real estate and require that someone, usually a Department of Administrative Services (DAS) surveyor, subsequently survey the real estate and provide a legal description to be used in the deed. This latter method is disfavored, because it is vague and increases the chances of errors in the conveyance. The lack of a legal description in the bill also prevents some of the safeguards described below from being implemented.

What is to be given in exchange for the real estate?

In legal terms, the question is “What is the consideration?” “Con-

sideration” is the value received for the real estate and usually consists of money, other real estate, or some mutual benefit to the state and some other entity.

◆ **Money** — The bill can specify a specific amount or provide that the amount be determined by an appraiser. The bill also can require the buyer to put down a percentage of the purchase price as earnest money.

◆ **Other real estate** — Sometimes the state wants real estate that another entity owns, and that other entity wants real estate that the state owns; one solution is a “land swap.”

◆ **Mutual benefit** — This option is used most often when the entity receiving the real estate (the grantee) is a political subdivision, because, in effect, the real estate is given away. (Example: The consideration for the conveyance of the real estate is the mutual benefit accruing to the state and the city of Smallville from the city’s use of the real estate as a park.)

Will there be any conditions on the conveyance?

Examples of conditions. Sometimes the member will want to put conditions on the conveyance. These conditions may include:

◆ Requiring the real estate to be used in a certain way, such as a city park.

◆ Reserving to the state the right to buy back the real estate under specified terms if the grantee ever wishes to sell the real estate.



◆ Reserving to the state some rights over the real estate, such as an easement over the real estate.

◆ Requiring the grantee to agree to assume the liability for any claim arising out of the real estate if, subsequent to the conveyance, someone other than the grantee sues the state in regard to some defect in the real estate. This condition is useful if there are environmental concerns regarding the real estate.

Enforcement mechanisms.

Real estate law provides several mechanisms to enforce a condition:

◆ **Possibility of reverter** — If a condition specified in the bill (and therefore the deed) occurs, the title to the real estate automatically reverts to the state, without any action on the part of the state.

◆ **Right of re-entry** — If a condition specified in the bill (and therefore the deed) occurs, the state has the right to retake the real estate. This option requires an affirmative action on the part of the state.

◆ **No enforcement provision** — If no enforcement mechanism is included in the bill, the state may still sue for damages for breach of the condition.

Elements of a land conveyance bill

A land conveyance bill usually contains the following elements in the following order:

Authorization clause

The authorization clause is usually the first provision in the bill and authorizes an official or entity, usually the Governor, to convey the real estate described in the bill.

Legal description

The legal description describes the real estate to be conveyed pursuant to the bill.

Conditions

If any conditions are to be placed on the conveyance, these conditions are usually described in the bill after the real estate is described.

Consideration

The bill describes what the state is to receive in exchange for conveying the real estate.

Earmarking the proceeds of the conveyance

Unless the bill provides otherwise, any money the state receives in exchange for conveying the real estate is deposited into the General Revenue Fund. The bill can provide that the money go elsewhere.

Costs of the conveyance

Unless the bill provides otherwise, each party pays its own costs associated with the conveyance.

A land conveyance bill should state any conditions on the conveyance and the method of enforcement.

The proceeds of a land conveyance may be earmarked.



The bill can establish a different arrangement.

Preparation of the deed

Each land conveyance bill contains a standard provision describing how the deed is to be prepared, executed, and recorded. This provision parallels requirements and procedures in permanent law regarding the preparation, execution, and recording of a deed to state-owned real estate.²

Expiration date

Usually land conveyance bills expire one year after they become effective. This can be changed if the member thinks the circumstances warrant a different time period. The reason for this short expiration period is that occasionally the conveyance is not completed. Without the expiration clause, if the conveyance is not completed after the land conveyance bill passes, any subsequent land conveyance bill regarding that real estate must repeal the first bill. If the first bill is overlooked and not repealed, the validity of a deed issued pursuant to the second conveyance bill is put into question. While the second grantee might win in court, a better approach is to avoid the courthouse entirely.

Endnotes

¹ Even if a state agency has independent statutory authority to convey real estate, the General Assembly can override the state agency’s wishes in a land conveyance.

² R.C. 5301.13

Procedure once a land conveyance bill is introduced

Once the bill is drafted and introduced, the bill usually is referred to the standing committee that has been designated to handle land conveyance bills. The standing committee may have established procedures to ensure that each land conveyance bill was properly drafted and that each conveyance will be completed. Upon referral to the committee, the member may receive a packet of forms from the chair of the committee containing requirements that generally must be met before the committee will report out the bill. The requirements relate to the following:

- ◆ Approval of the legal description in the bill by the local county auditor or county engineer.
- ◆ Approval of the legal description in the bill by DAS, the Department of Transportation, or the Department of Natural Resources, as appropriate.
- ◆ Approval of the terms of the conveyance by the agency having jurisdiction over the real estate.
- ◆ Approval of the terms of the conveyance by the person or entity to receive the real estate. 

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