



# SB 264 Refresher Webinar

In case you didn't catch it before....

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# SB 264 Became Effective July 1, 2023

- Enacted as Secs. 692.201-205, F.S. “Conveyances to Foreign Entities.”
- Law targets
  - those defined as “foreign principals”
  - domiciled in seven “foreign countries of concern”
  - from acquiring agricultural lands and
  - real property within certain distances of military installations and critical infrastructure facilities in Florida
  - Any/all real property if the foreign principal is affiliated with China

# Foreign Principals

# Foreign Principals Defined

- Foreign principals are:
  - Not citizens or lawful permanent residents of the United States
  - Are *domiciled* in any of these foreign countries of concern:
    - the People's Republic of China
    - the Russian Federation
    - the Islamic Republic of Iran
    - the Democratic People's Republic of Korea
    - the Republic of Cuba
    - the Venezuelan Regime of Nicolás Maduro,
    - or the Syrian Arab Republic
  - including any agency or other entity of significant control of such foreign country of concern

# Foreign Principals Defined

- Foreign principals also include
  - the government, or any official of the government, or a political party or member of any political party of a foreign country of concern
  - or a partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country of concern, or a subsidiary of such entity
    - Foreign principals are also defined as any one or more of these persons or entities having a *controlling interest* in any legal entity formed for the purpose of owning real property in Florida

# Place of Domicile

- It is the foreign principal's *place of domicile*, not citizenship, that controls
  - Ex. a British citizen domiciled in Hong Kong is subject to the law
  - Ex. a Russian citizen domiciled in Canada is not
- Individuals approved by the federal government to participate in the EB-5 visa program are excluded from definition of foreign principal – per rule, not per statute
- Those granted asylum are also excluded

# Controlling Interest in Entity Defined

- The term “controlling interest” is not defined in SB 264
- BUT Section 1 of SB 264, enacted as Sec. 287.138, F.S. (affecting governmental entities contracting with entities of foreign countries of concern) defines “controlling interest” as **possession of the power to direct the management or policies of a company**
- Persons, entities with right to vote 25%+ of voting interests of company or entitled to 25%+ of profits *are presumed* to possess a controlling interest
- Newly adopted rules incorporate this definition

# Controlling Interest in Real Property Defined

- Q: What is a “controlling interest in real property” and a “controlling interest in agricultural property”?
- A: The foreign principal has right to develop or improve the realty and attach fixed or immovable structures on it whether the rights are exercised or shared concurrently with any other person and regardless of whether the underlying real property is subject to an easement or other encumbrance
- Note: per Florida Department of Commerce rule, leases are excluded from definition of an "interest in real property."



# What About Taiwan?

- Q: Are those domiciled in Taiwan deemed foreign principals?
- The U.S. government continues to adhere to the “One China” policy
- BUT Taiwan is considered a separate country for purposes of U.S. immigration laws
- A: No clear answer

# What About Venezuelans?

- Q: Are all persons domiciled in Venezuela considered foreign principals?
- A: No clear guidance is afforded in SB 264
  - But - other federal regulations dealing with the treatment of foreign adversaries differentiate between the Maduro government and its Venezuelan people

# What About Dual Citizenship?

- No clear guidance
- Scenario #1: U.S. citizen and citizen of a foreign country of concern
- Scenario #2: Citizen of foreign country of concern and non-foreign country of concern (ex. Russia and Israel)

# Affected Lands & Interests

# Affected Lands

- SB 264 prohibits a foreign principal from having a direct or indirect controlling interest in **agricultural land** or acquiring by purchase, grant, devise, or descent any such interest in agricultural land, except a *de minimus indirect interest*
- Subject to limited exceptions, a foreign principal may also not directly or indirectly own, or have a controlling interest in, or acquire by purchase, grant, devise, or descent, any interest, *except a de minimus indirect interest*, in **real property** on or within 10 miles of any *military installation* or *critical infrastructure facility*

# All Agricultural Land is Affected

- Q: What is considered “agricultural land”?
- A: Land classified as agricultural under Sec. 193.461, F.S.

*“(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.”*

# Affected Real Property

## Military Installations

- Q: What is a “military installation”?
- A: “Military installation” means a base, camp, post, station, yard, or center encompassing at least 10 contiguous acres that is under the jurisdiction of the Department of Defense or its affiliates

# Affected Real Property

## Critical Infrastructure Facilities

Q: What is a “critical infrastructure installation”?

A: Any of the following, if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized persons:

- (a) A chemical manufacturing facility.
- (b) A refinery.
- (c) An electrical power plant as defined in s. 403.031(20). **NOTE: this is an incorrect statutory reference**
- (d) A water treatment facility or wastewater treatment plant.
- (e) A liquid natural gas terminal.
- (f) A telecommunications central switching office.
- (g) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- (h) A seaport as listed in s. 311.09.
- (i) A spaceport territory as defined in s. 331.303(18).
- (j) An airport as defined in s. 333.01.



# De Minimus Indirect Interest - Defined

- A foreign principal's land ownership is deemed a *de minimus indirect interest* if
  - it derives from owning registered equities in a publicly traded company owning the land, and
  - the foreign principal's interest in the company is
    - (a) less than 5% of any class of registered securities or less than 5% in the aggregate in multiple classes of registered securities, or
    - (b) a noncontrolling interest, as that term is defined in Sec. 287.138(1)(a), F.S. in an entity controlled by a company that is both registered with the U.S. Securities and Exchange Commission as an investment advisor under the Investment Advisers Act of 1940 and is not a foreign entity

# De Minimus Indirect Interest - Further Defined

## By Rulemaking State Agencies

- Florida Dept. of Commerce expands definition to include foreign principal's passive ownership in an entity, i.e., inability to direct affairs of entity
- Florida Dept. of Commerce and Florida Dept. of Agriculture and Consumer Services also define the term "indirectly own" to mean the foreign principal has an interest in an entity with legal or equitable title to the realty, or the foreign principal has an interest in the realty, but another individual or entity holds the legal or equitable title

# Additional Acquisitions of Affected Lands

- Q: Can a foreign principal owning affected land as of July 1, 2023, acquire additional land?
- A: If, as of July 1, 2023, a foreign principal owns any interest in affected land, the foreign principal may continue to own it - but can't purchase or acquire by grant any additional affected land
  - However, if affected land acquired via devise and descent, the enforcement of a security interest or the collection of debts, SB 264 allows for the acquisition **but requires that the foreign principal divest itself of such property within three years of the acquisition**

# Map of Affected Land Available?

- Q: Is a map available evidencing the location of military installations and critical infrastructure facilities?
- A: No map but this has been made available:  
<https://floridacommerce.my.site.com/SecureFlorida/s/>

Warning! It's far from perfect

# Exceptions

# Diplomatic Purposes Exception

- There are two narrow exceptions to the prohibitions against foreign principals purchasing affected lands
  - The law does not apply to real property recognized, acknowledged, or allowed by the Federal Government for diplomatic purposes
  - Limited Residential Exception – see next slide

# One Residence Exception

- Allows for a *natural* person to purchase one residential property up to 2 acres in size if
  - (a) the parcel is not on or within 5 miles of any military installation
  - (b) the person has a current verified U.S. visa that is not limited to authorizing tourist-based travel or holds official documentation confirming that the person has been granted asylum in the U.S., and such visa or documentation authorizes the person to be legally present in Florida, and
  - (c) the purchase is in the name of the person holding the visa or official documentation
- Foreign principals associated with China are allowed this exception.

# Buyer's Affidavit



# Buyer's Affidavit (Not Attestation)

- SB 264 compels buyers of real property located on or within 10 miles of any military installation or critical infrastructure structure to sign and deliver a new form of affidavit
  - “at the time of purchase”
- Attesting under penalty of perjury that they are
  - not a foreign principal, or
  - are a foreign principal but authorized to purchase the property, and
  - in compliance with the law

# FR/Bar 6x

FR/Bar “6x” gives notice

- Buyer must provide signed affidavit required by the new law

**ATTENTION: SELLER AND BUYER**

**CONVEYANCES TO FOREIGN BUYERS:** Part III of Chapter 692, Sections 692.201 - 692.205, Florida Statutes, 2023 (the “Act”), in part, limits and regulates the sale, purchase and ownership of certain Florida properties by certain buyers who are associated with a “foreign country of concern”, namely: the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property in violation of the Act.**

**At time of purchase, Buyer must provide a signed affidavit which complies with the requirements of the Act.** Seller and Buyer are advised to seek legal counsel regarding their respective obligations and liabilities under the Act.

696

697 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE**  
698 **OF AN ATTORNEY PRIOR TO SIGNING.**

699 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.**

700 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms*  
701 *and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions*  
702 *should be negotiated based upon the respective interests, objectives and bargaining positions of all interested persons.*

703 AN ASTERISK (\*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO  
704 BE COMPLETED.

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710 Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic. **It is a crime to buy or knowingly sell property**  
711 **in violation of the Act.**

Provide a signed affidavit which complies with the requirements of the Act.  
Legal counsel regarding their respective obligations and liabilities under the Act.

\_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Seller’s address for purposes of notice  
 \_\_\_\_\_  
 \_\_\_\_\_

722 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, “Broker”), are the only Brokers entitled  
723 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent to  
724 disburse at Closing the full amount of the brokerage fees as specified in separate brokerage agreements with the parties  
725 and cooperative agreements between the Brokers, except to the extent Broker has retained such fees from the  
726 escrowed funds. This Contract shall not modify any MLS or other offer of compensation made by Seller or Listing Broker  
727 to Cooperating Brokers.

728\* \_\_\_\_\_  
729 **Cooperating Sales Associate, if any** **Listing Sales Associate**

730\* \_\_\_\_\_  
731 **Cooperating Broker, if any** **Listing Broker**

# Safe Harbors

- Failure to obtain or maintain the affidavit
  - does not affect the title or its insurability or
  - subject the closing agent to civil or criminal liability absent the closing agent's actual knowledge that the transaction violates the new law

# Best Practices

- Collect affidavit in all transactions
  - Contract likely called for it
  - Will serve to protect seller and closing agent
    - Rules contemplate rebuttable presumption that seller/closing agent who relies upon and maintains the affidavit had no actual knowledge the transaction violated the law

# Florida Real Estate Commission's (FREC) Role

- Per SB 264, Florida Real Estate Commission (FREC) to supply form of affidavit and related procedures
- FREC has issued final forms of affidavit (for individual & entity buyers)
- Affidavit provides:
  - Legal description of land being acquired
  - Statement that affiant was given opportunity to consult attorney
  - Acknowledgement that the representations will be relied upon to establish compliance with law
  - Option of initialing that affiant is/is not a foreign principal,
  - Averment that affiant is in compliance with the law

# Registration Requirements

# Registration Requirements

## When must foreign principals register?

- *Foreign principals owning agricultural lands as of July 1, 2023, are required to register with FDACS by January 1, 2024.*
  - Sec. 692.202(3), F.S.
- *Foreign principals owning real property on or within 10 miles of a military installation or critical infrastructure facilities are required to register their ownership with FDOC by December 31, 2023.*
  - Sec. 692.203(3), F.S.
  - *China-affiliated foreign principals owning any real property in Florida as of July 1, 2023, are required to register with FDACS by January 1, 2024, and with FDOC by December 31, 2023, regardless of its location.*
  - Secs. 692.202(3)(a) & 692.204(4), F.S.
- **Note:** The new rules provide a grace period and registration is required within 30 days of the effective date of the rule

# Registration Requirements

## When must foreign principals register?

- *Foreign principals that come into ownership of affected lands after July 1, 2023, by way of devise, descent, enforcement of security interests, or the collection of debts* are required to register within 30 days after the property is owned or acquired.
  - Rule 73C-60.003(4)(a), F.A.C.; Rule 5J-27.003(2)(a), F.A.C.
- *Foreign principals that acquire affected lands by having qualified for the “limited residence exception”* are required to register within 30 days after the property is owned or acquired.
  - Rule 73C-60.003(3)(a), F.A.C.



# Registration Requirements

Equitable title is covered!

- *Foreign principals who obtain equitable title by executing a real estate contract.* FDOC rules contemplate that if the contract closing date is within 90 days, the foreign principal must register its legal interest within 30 days of acquiring legal title. However, if a foreign principal obtains equitable title by executing a real estate contract without the obligation of closing within 90 days, registration is required within 120 days of acquiring equitable title.

# Fines, Penalties & Lien Rights

# Criminal Penalties

- Most severe charges for violative purchases by China-affiliated foreign principals.
  - Constitute a third-degree felony
- Sellers that knowingly sell real property to China-affiliated foreign principals commit a first-degree misdemeanor.
- All other foreign principals violating law liable for 2nd degree misdemeanor
  - Those who knowingly sell to them are similarly liable

# Forfeiture Rights

- Lands and interests acquired in violation of SB 264 subject to forfeiture to the state
- State agencies granted enforcement mechanisms
- Including right to file civil action for forfeiture in circuit court where the land lies
- Lis pendens issued per Sec. 48.23, F.S. Final judgment of forfeiture relates back to date of LP
- Rights of bona fide lienholders protected. Procedures set out for disposition of proceeds upon sale of forfeited lands

# Fines & Liens

- State may levy fines against foreign principals that fail to timely register
- Up to \$1,000 each day registration is late
- Notice of violation and a right to hearing afforded prior to final state action
- State may place a lien against the unregistered lands for the unpaid balance of any penalties assessed

# Fund Resources

# What Has The Fund Made Available?



The Fund  
Our Legacy Software Services Education Membership Resources Support Contact Us  
Ligon

## Conveyances to Foreign Entities Part III, Chapter 692, Florida Statutes

[Resources](#) > [Conveyances to Foreign Entities](#)

## New Law: SB 264 & What You Need to Know

We are all talking about the new law, SB 264, that restricts ownership of certain types of property by "foreign principals" from any of several "foreign countries of concern." One of the provisions of the new law is that buyers of property sign an affidavit at closing, stating whether they are a foreign principal and that they are in compliance with the law.

The new law requires an affidavit be provided at closing by the buyer affirming that **1)** they are not a "foreign principal" as defined under the new law or they are a "foreign principal" permitted to purchase property, and **2)** they are in compliance with the law.

### Questions

Send us your questions and we will get back to you as soon as we can. Help us learn about the issues you are encountering in your practices, which in turn guides how we can best support you.

Email: [foreigninterests@thefund.com](mailto:foreigninterests@thefund.com)

### Where to Access

#### Notice and Affidavit Forms - [Download](#)

To assist Fund Members until the "official" affidavit is available from the Florida Real Estate Commission, we have provided a suggested Notice that generally explains the new law and two suggested Affidavit forms (one for an individual buyer and the other for an entity buyer). Fund Members should consider these forms in the context of a specific transaction and their role (they may be acting as the title/closing agent, buyer's attorney or seller's attorney).

#### Guidance For Use of Notice and Affidavit - [Download](#)

Suggestions and other information about how the Notice and Affidavit can be used.

### On-Demand Training Library

#### FL SB-264 Conveyances to Foreign Entities

#### Florida SB 264 - Conveyances to Foreign Entities - [Watch Now](#)

Legislative update. Many bills made it through the legislature and are either in the hands of the Governor for his consideration or are in the "queue" to go to...

#### FL SB-264 Fund Guidance on the Affidavit & Notice Form

#### Florida SB 264 - Fund Guidance on the Affidavit & Notice Form - [Watch Now](#)

Do you often have transactions with foreign individuals buying real estate? Do you want to learn more about the affidavit required by a new law in Florida...

#### FL SB-264 Questions & Answers

#### Florida SB 264 - Questions & Answers - [Watch Now](#)

Do you often have transactions with foreign individuals buying real estate? Do you want to learn more about the affidavit required by a new law in Florida...

Email questions to:

**ForeignInterests@thefund.com**





**Thank you**  
**for your time and attention**