



Alert

## Fund Members,

The legislature was busy this year, and while there are several laws impacting real estate that we are analyzing for our Members, here is one to note in particular:

- SB 264, Chapter No. 2023-33, effective July 1, 2023. See, <https://laws.flrules.org/2023/33>

Among other things, this law sets some distinct requirements on the timing and type of interests foreign principals may maintain, if at all, in certain Florida real estate.

What is a foreign principal?

- The statute provides a lengthy definition, but generally it means a member of a political party in a foreign country of concern, any person domiciled in a foreign country of concern that is not a citizen or lawful permanent resident of the United States, or any such person with a controlling interest in a legal entity formed for the purpose of owning real property in the State.

Foreign countries of concern include:

- 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 Nicolas Maduro, and the Syrian Arab Republic, including any agency or other entity over which any of the foregoing maintain significant control.

A foreign principal may not own, except in limited circumstances:

- Agricultural lands (means land classified as agricultural under F.S. 193.461); or
- Real property on or within 10 miles of any military installation or critical infrastructure facility (both as defined in the new law). "Critical infrastructure facility" includes a chemical manufacturing facility; a refinery; an electrical power plant; a water or wastewater treatment plant; a liquid natural gas terminal; a telecommunications central switching office; a gas processing plant; a seaport; a spaceport territory; an airport. Consult the statute for more precise language.

A foreign principal who owns (or takes ownership) of such property **before** July 1, 2023, may continue to own that land but must register with the applicable department. For agricultural lands, registration is with the Department of Agriculture and Consumer Services (DACS) by January 1, 2024, and as to property on or within 10 miles of a military installation or a critical infrastructure facility registration is with the Department of Economic Opportunity (DEO) by December 31, 2023. DACS and DEO are to establish forms for such registration and rules to implement their respective sections of the law.

Failure to register as described in the law or to own or acquire real property in violation of the law may result in daily penalties, lis pendens, a possible ex-parte seizure order and forfeiture, with forfeiture subject to the rights of bona fide lienholders.

There is an exemption for ownership or registration as to either agricultural lands or real property on or within 10 miles of any military installation or critical infrastructure facility if that the ownership interest is indirect and *de minimus*, as described in the statute.

In addition, a foreign principal who is a natural person may purchase one residential property up to 2 acres in size that is not on or within 5 miles of any military installation in the State, provided the foreign principal takes title and is authorized to be in the United States and in the State of Florida with official documentation (e.g., visa). In this situation, the foreign principal must register such ownership with the appropriate agency within 30 days.

Foreign principals who become owners of an interest in the proscribed Florida property **after** July 1, 2023, as a result of devise, descent, enforcement of security interest or collection of debts must divest themselves within 3 years.

In all purchase transactions, the buyer must complete an affidavit attesting that such buyer is not a foreign principal or a foreign principal prohibited from purchasing and is otherwise in compliance with the applicable section of this new law.

- Failure to obtain the affidavit does not affect the title or insurability of the title to the property.
- Provided the closing agent does not have actual knowledge that the transaction will result in a violation of the law, failure to obtain or maintain the affidavit does not subject them to civil or criminal liability.
- The Florida Real Estate Commission (FREC) is responsible for adopting the form affidavit required by the law.

Note that there is criminal liability for any person to knowingly sell real property in violation of this law. There are also criminal repercussions for ownership in violation of the law.

There are even more stringent rules concerning ownership of real property by individuals and entities affiliated or associated with the People’s Republic of China.

- Ownership of any type of property is not permitted; however, there is a carve-out for one residential parcel of 2 acres or less that is not on or within 5 miles of a military installation and the person has the appropriate documentation for legal presence in the State.
- All persons under this section of the law must register with the Department of Economic Opportunity if they have an ownership interest in any real property in Florida unless such interest is an indirect *de minimus* interest as defined under the law.

We continue to study the law to determine what our Members want or need to know to help them address transactions in light of this new law. We are also monitoring action required to be taken by DACS, DEO and FREC. Stay tuned.

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