



## The Basics

### ***What is the effective date of the new law? What are the applicable Florida statutes?***

The new law (SB 264) went into effect on July 1, 2023. Fund Members should familiarize themselves with new secs. 692.201-205, F.S.

### ***Please summarize the law in one sentence.***

The law restricts the acquisition of certain Florida real property by “foreign principals” – i.e., foreign persons and entities associated with “foreign countries of concern” that already own, or after July 1, 2023, acquire or wish to purchase affected Florida real property.

### ***Are all foreign persons and entities affected by the law?***

No. Just persons and entities associated with certain “foreign countries of concern.”

### ***Please define “foreign countries of concern.”***

See s. 692.201(3), F.S. The list includes the People’s Republic of China, the Russian Federation, Iran, North Korea, Syria, Cuba, and the Venezuelan regime of Nicolas Maduro, including any agency or entity of significant control by such country of concern.

### ***Please define “foreign principals.”***

See s. 692.201(4), F.S. for the full definition. For most Fund Members, foreign principals will primarily involve non-U.S. citizens living in a foreign country of concern – e.g., Venezuela, China (incl. Hong Kong and Macao), and Russia – already owning or seeking to buy certain affected real property in Florida.

## The Affected Real Property

### ***What lands are affected by the law?***

Agricultural land and land on or within a radius of 10 miles of a “critical infrastructure facility” or a “military installation.”

### ***Is “agricultural land” defined in the law?***

Yes. Sec. 692.201(1), F.S. defines agricultural land as land classified as agricultural under s. 193.461, F.S.

### ***Are “critical infrastructure facilities” defined in the law?***

Yes. See s. 692.201(2), F.S. for the complete list of facilities.

### ***Is “military installation” defined in the law?***

Yes. See s. 692.201(5), F.S. for the definition.

### ***Is there a map showing the locations of all critical infrastructure facilities and military installations in Florida?***

No.



# Laws Pertaining to Foreign Principals Owning Affected Real Property Prior to July 1, 2023; Registration Requirements

***Are foreign principals owning affected lands as of July 1, 2023 (the effective date of the law) required to sell or dispose of their interests by a date certain?***

No. They are, however, (i) required to register with the State, and (ii) prohibited from purchasing or acquiring by grant, devise, or descent any additional affected real property.

***Is it true that foreign principals owning affected real property will have to register with the State?***

Yes. As of July 1, 2023, foreign principals owning affected real property must register with the State.

***When do foreign principals have to register with the State? And where?***

It depends on whether the land is agricultural or not.

For agricultural land, see s. 692.202, F.S. Foreign principals owning agricultural land before July 1, 2023, must register with the Dept. of Agriculture and Consumer Services by Jan. 1, 2024.

For non-agricultural land, see s. 692.203(3), F.S. If prior to July 1, 2023, foreign principals owned land within 10 miles of any military installation or critical infrastructure facility, they must register with the Dept. of Economic Opportunity by Dec. 31, 2023 (now known as the Dept. of Commerce).

***Is the State now accepting registrations?***

No. As of July 15, 2023, neither State department was accepting registrations.

***What is known about the registration requirements?***

The identified State departments will issue the forms of registration. The law mandates that the registrant identify its name, the property address, parcel I.D. number and legal description, and in the case of agricultural land, the number of acres.

***Are there any penalties imposed on foreign principals for failing to register with the State?***

Yes. For each day the registration is “late” (as defined by the law), a penalty of \$1,000.00 is assessed. The State may impose a lien on the unregistered land for the unpaid balance of any penalties assessed.

***Are there any other registration requirements imposed on foreign principals?***

Yes. If a new acquisition qualifies under the “one residence exception” addressed in s. 692.203(4), F.S., the foreign principal must register within 30 days of acquisition with the Dept. of Economic Opportunity/Commerce. The rules on such registration are to be promulgated by the Department.



# Laws Pertaining to Foreign Principals Acquiring Affected Real Property After July 1, 2023

## A. Via Devise, Descent or Foreclosure

***I understand that foreign principals are restricted or even prohibited from purchasing certain real property after July 1, 2023, but what if the foreign principal acquires affected property by devise, descent or through enforcement of a security interest, e.g., mortgage foreclosure after July 1, 2023?***

See secs. 692.202(4) and 692.203(5), F.S. In any of those circumstances, the foreign principal must divest itself of such real property within 3 years of acquisition.

## B. Via Purchase and Sale

***Is there any property prohibited from purchase by all foreign principals?***

Yes. See s. 692.202(1). Starting July 1, 2023, all foreign principals are prohibited from acquiring agricultural land in Florida.

***Are all foreign principals treated equally regarding what lands they are prohibited or restricted from purchasing?***

No. Sec. 692.204, F.S. specifically addresses just China-aligned foreign principals and restricts the purchase by them of any type of Florida real property (with the limited “one residence” and diplomatic exceptions). This broad restriction does not apply to foreign principals from all other foreign countries of concern.

***Are all lands in Florida now “off-limits” to foreign principals?***

No. As to all but China-aligned foreign principals, all Florida real property is available for purchase except for agricultural land and land within 10 miles of a military installation or critical infrastructure facility.

***Is all land within a 10-mile radius of a military installation or critical infrastructure facility now “off-limits” to all foreign principals?***

No. There are two exceptions to the law prohibiting foreign principals, even those aligned with China, to acquire such affected lands. They are (i) the “one residence” exception, and the (ii) the “diplomatic purposes” exception.

***Are there exceptions to the new laws restricting or prohibiting the purchase of affected lands by foreign principals, including those associated with China?***

Yes. They are (i) the “one residence” exception, and (ii) the “diplomatic purposes” exception.

***Please define the “one residence” exception.***

See s. 692.203(4), F.S. A foreign principal who is a natural person may purchase one residential property up to 2 acres in size if (a) the parcel is not within 5 miles of a military installation in the state, (b) the person has a current U.S. visa that’s not limited to authorizing tourist-based travel or official documentation confirming asylum has been granted in the U.S. or such visa or documentation authorizes the person to be legally present within Florida, and (c) the purchase is in the name of the visa or document holder.

***Will the foreign principal acquiring a residence under this exception be required to register with the State?***

Yes, with the Dept. of Economic Opportunity. Rules regarding such registration have yet to be promulgated.



## Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

### ***Please define the “diplomatic purposes” exception.***

See s. 692.205. The new law does not apply to real property used for diplomatic purposes as recognized by the Federal Government.

## Impact of the New Law on Fund Members and the Title Insurer

### ***How does this new law affect Fund Members?***

**A. As counsel for foreign principals now owning affected land.**

Fund Members may wish to notify foreign principal-clients owning affected property of the registration requirements and the law’s restrictions on future acquisitions.

**B. As counsel for sellers of land in Florida.**

Sellers face criminal penalties for violating the law, so Fund Members may expect to be questioned by them and their real estate agents about how the new law may impact a particular transaction. For that reason, Fund Members are urged to learn as much as possible about the law and stay current on all new developments.

**C. As counsel for buyers of land in Florida.**

Buyers face criminal penalties and the forfeiture of the land purchased in violation of the law. Fund Members may expect to be questioned by them and their real estate agents about how the new law may impact a particular transaction. For that reason, Fund Members are urged to learn as much as possible about the law and stay current on all new developments.

**D. As title agent.**

The Fund does not presently intend to add any new requirement or exception to the title insurance commitment or policy.

**E. As closing agent.**

The law is vague as to the duties, if any, imposed on the closing agent. The law requires that an affidavit be supplied by a buyer at the time of purchase but does not explicitly direct the closing agent to prepare, review, or collect the affidavit. Rather, the law provides that the failure to obtain or maintain the affidavit does not affect the title or its insurability or “[s]ubject the closing agent to civil or criminal liability, unless the closing agent has actual knowledge that the transaction will result in a violation of the law.” See secs. 692.202(5)(b), 692.203(6)(b) and 692.204(6)(b), F.S.



### Affidavit Required

***Under the new law, who is required to give an affidavit?***

Buyers of agricultural land and land on or within 10 miles of a military installation or critical infrastructure facility must provide an affidavit at the time of purchase.

***Is “time of purchase” defined in the law?***

No.

***What must the affidavit attest to?***

That the buyer is not a foreign principal and is in compliance with the law, or, where applicable, not a foreign principal prohibited from purchasing the subject property.

***What might be examples of “not a foreign person prohibited from purchasing the subject real property”?***

Examples might include:

- A Venezuelan national residing in Caracas purchasing non-affected commercial warehouse property (i.e., non-agricultural land not on or within 10 miles of a military installation or critical infrastructure facility)
- A British national permanently residing in Hong Kong purchasing a single-family home that qualifies for the “single residence” exception.

***Is it reasonable to expect that after July 1, 2023, all buyers will be asked to provide this affidavit?***

Yes, and for a number of reasons. First, the commonly used FR/BAR contract was amended to add a statement that “[a]t time of purchase, Buyer must provide a signed Affidavit which complies with the requirements of the [new law].” Second, it may be best to collect the affidavit from all buyers to avoid charges over selective enforcement. Finally, prudent sellers and closing agents will want the affidavit to help safeguard against their possible liability.

***Does the new law provide a “form” affidavit?***

The law charges the Florida Real Estate Commission (FREC) to publish rules pertaining to the affidavit and a form of same. To date, however, FREC has yet to promulgate any rules or issue its form of affidavit.

***Has The Fund created suggested forms of affidavit for Members to use until FREC issues its form?***

Yes. The Fund has created these suggested forms that Members may wish use (and tailor to their transaction):

- [Affidavit for use by individuals and with a combined Notice describing the new law](#)
- [Affidavit for use by entities with a combined Notice describing the new law](#)
- [Guidance for Use of Notice and Affidavit](#)



## Penalties for Violations of the Law

### ***What penalties are imposed on the seller for violating the new law?***

A seller commits a second-degree misdemeanor by knowingly selling affected land in violation of the law, and a first-degree misdemeanor if such land is knowingly sold to a China-aligned buyer.

### ***What penalties are imposed on the buyer for violating the new law?***

A China-aligned buyer commits a third-degree felony for violating the law. All other foreign principals violating the law commit a second-degree misdemeanor.

### ***Can land sold in violation of the law be subjected to a forfeiture action?***

Yes. See secs. 692.202(6); 692.203(7) and 692.204(7), F.S.

## Fund Resources

### ***What education is available from The Fund for its Members on the new law?***

A compendium of materials is available on The Fund's website under the Resources tab and can be found [here](#).

### ***Has the Fund recorded any webinars on the subject?***

- [Florida SB 264 – Conveyances to Foreign Entities](#) (44 mins) – introduction to the law's basics
- [SB 264 Law: Conveyance to Foreign Principals – Fund Guidance on the Affidavit and Notice](#) (22 mins)

### ***Does The Fund have a handy resource that I can share with my real estate agent-clients?***

Yes. We have prepared a flyer suitable for Members to share with real estate professionals.

- [What the Real Estate Professional Needs to Know](#)

## Miscellaneous

### ***Is this law legal? Is anyone challenging the constitutionality of the law?***

Yes. A [federal lawsuit](#) was filed in the United State District Court for the Northern District of Florida, challenging the law on equal protection grounds, vagueness, and other grounds. The ACLU filed the lawsuit on behalf of Chinese nationals residing in the U.S., i.e., people who are not U.S. citizens or permanent residents whose "domicile" may be considered China. The U.S. government has filed papers supporting the ACLU's position. The plaintiffs filed an emergency motion for a preliminary injunction on June 6, 2023, which is scheduled for hearing on July 18, 2023.