



# Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

## The Basics

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

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

### ***Are there implementing rules now in effect?***

Yes. The Florida Department of Commerce (“FDOC”) [formerly known as the Dept. of Economic Opportunity] is statutorily charged with adopting rules implementing secs. 692.203 and 692.204, F.S. FDOC issued Rules 73C-60.001-.007, F.A.C., effective January 4, 2024.

The Florida Department of Agriculture and Consumer Services (“FDACS”) is statutorily charged with adopting rules implementing sec. 692.202, F.S. FDACS has given notice of proposed Rules 5J-27.001-.006, F.A.C., but the rules are not yet in effect.

### ***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 domiciled in “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 domiciled in 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.



## Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

### ***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. However, FDOC has created a search engine that allows one to enter an address to determine if the property is subject to registration requirements. The search engine is not fail-proof and the fact that an address cannot be located does not mean it is not subject to registration or not otherwise affected by the law. The search engine can be found here: <https://floridacommerce.my.site.com/SecureFlorida/s/>

## 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 FDACS 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 FDOC by Dec. 31, 2023. This deadline has been extended by FDOC rule to February 3, 2024.

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

Yes. The website to register agricultural lands with FDACS is: <https://fpregistration.fdacs.gov/>. The website to register all other real property with FDOC is: <https://floridacommerce.my.site.com/SecureFlorida/s/>

### ***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.



## Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

### ***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 FDOC.

Additionally, foreign principals who obtain equitable title by executing a real estate contract must register. 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. 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.

## 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.



## Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

### ***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 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, within 30 days of such acquisition with FDOC.

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

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

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

### ***How does this 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 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 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.



## Conveyances to Foreign Entities

### SB 264 Frequently Asked Questions

**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 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. The implementing rules provide create a rebuttable presumption that a closing agent who relies upon and maintains the affidavit had no actual knowledge the transaction violated the law.

## Affidavit Required

***Under the 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. However, the implementing rules consider time of purchase to mean at time of closing.

***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., nonagricultural 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 [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. In fact, the implementing rules



## Conveyances to Foreign Entities

### SB 264 Frequently Asked Questions

create a rebuttable presumption that a closing agent and seller who rely upon and maintain the affidavit had no actual knowledge the transaction violated the law.

#### ***Does the 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. FREC has issued forms of affidavit for use by individual and by entity buyers and can be found [here](#).

#### ***Has The Fund created suggested any forms for Members to use in connection with the law?***

Yes. The Fund has created a Notice that explains the law in broad terms, and which can be shared with buyers. The Fund has also created a Guidance for Use of Notice with Affidavit:

- [Guidance for Use of Notice and Affidavit](#)
- [Notice and Affidavit Forms](#)

## Penalties for Violations of the Law

#### ***What penalties are imposed on the seller for violating the 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 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 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
- [Florida SB 264 – Questions & Answers](#) (35 mins)
- [Florida SB 264 - Foreign Principal FDOC Registration](#) (34 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.



## Conveyances to Foreign Entities

SB 264 Frequently Asked Questions

- [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 States District Court for the Northern District of Florida, challenging the law on equal protection grounds, vagueness, and other grounds. The ACLU filed suit on behalf of Chinese nationals residing in Florida who are not U.S. citizens or green card holders. The plaintiffs' emergency motion for a preliminary injunction was denied on Aug. 17, 2023. The ruling is on appeal.