



CRIMINAL PENALTIES IN FLORIDA FOR FAILING TO PROVIDE AFFIDAVIT ABOUT FOREIGN ENTITIES AT CLOSING

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Effective July 1, 2023, new Florida legislation (FL SB264) prohibits the purchase of Florida agricultural lands and land within 10 miles of military bases or critical infrastructure by foreign principals from China, Cuba, Iran, North Korea, Russia, Syria and Venezuela (collectively, the “Foreign Countries of Concern”).

Foreign principals are considered: the actual government of Foreign Countries of Concern; a member of a political party of Foreign Countries of Concern; any foreign entity incorporated in Foreign Countries of Concern; and anyone “domiciled” in the Foreign Countries of Concern, who are not a United States citizen or lawful permanent resident of the United States.

An affidavit will be required if the property in the transaction is agricultural land or within 10 miles of a military installation or critical infrastructure facility. Agricultural land is defined by the County Property Appraiser as land which is classified as having a bona fide agricultural purpose. A bona fide agricultural purpose is measured using factors which establish whether there is a good faith commercial agricultural use of the land. Land near military bases and critical infrastructure is defined as property within 10 miles of a military base (10+ acres in size) and designated “critical” infrastructure is considered seaports, airports, power plants or telecommunications switching stations. Given the proximity of many properties to critical infrastructure and the criminal penalties for violating the law, this affidavit will likely be used at closings on all properties.

There are some exceptions. Foreign principals can acquire residential real property if: they register the property with the State within 30 days; it is less than two acres in size; the foreign principal is a natural person; if the foreign principal holds a U.S. visa; and the residential real property is not located within five miles of a military installation. The de minimus exception applies if the foreign principals’ ownership of the Florida land is due to the foreign principals’ ownership of a publicly traded company and either the foreign principal’s interest is less than 5% of the registered equities of the Company or is a noncontrolling interest which is registered with the SEC as an investment advisor.

The legislation allows for properties to be grandfathered in. If you are a foreign principal and own property (prior to July 1, 2023) within 10 miles of critical infrastructure, you must register with the Florida Department of Economic Opportunity (DEO) by December 31, 2023, or a fine of \$1,000 a day will begin accruing after January 31, 2024. The DEO can collect this fine by placing a lien on the property. Of course, you are also prohibited from acquiring additional property within 10 miles of critical infrastructure or military installations. (Fla. Stat. 692.203 (2)). If you are a foreign principal who owned agricultural land (prior to July 1, 2023), you are allowed to continue owning such land and will have until July 1, 2024, to register with the Department of Agriculture and Consumer Services. Failure to register can result in a civil penalty of \$1,000 per day and result in a lien. Of course, you will not be allowed to acquire additional agricultural land.

Property buyers or sellers who violate the restrictions could face up to 60 days in prison and a \$500 fine. Agricultural land acquired in violation of the ban may result in forfeiture of the property to the state. (Fla. Stat. Section 692.202). Property sellers who knowingly violate this law and sell property to Chinese foreign principals could face up to one year in prison and a \$1,000 fine. Chinese nationals who violate the law could face up to five years in prison and a \$5,000 fine. Furthermore, closing agents will have civil and criminal liability if they have actual knowledge the transaction will result in a violation of these laws.

The Florida Real Estate Commission (“FREC”) is charged with responsibility for implementing the new law and releasing the affidavit. To date, this affidavit has not been released. There will also be a new disclosure in the FAR/BAR contract, which also has not been updated.

While there is an emergency preliminary injunction filed by the Florida American Civil Liberties Union in the case *Shen v. Simpson*, it is still pending. Therefore, this law is active and in full effect.

If you have any questions regarding the new statutes under Conveyances to Foreign Entities or any other real estate matter, please contact any Roetzel attorney.

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