

TAKE AWAYS ON THE GOVERNMENT OF FLORIDA'S PROHIBITIONS ON ACQUISITION OF REAL PROPERTY IN FLORIDA BY FOREIGN PRINCIPALS

Florida's new law, the Conveyances to Foreign Entities Act (the "Act"), Sections 692.201 – 205, Florida Statutes, went into effect on July 1, 2023, and redefined the Florida real estate market for foreign purchasers from seven "countries of concern." The Act requires those foreign purchasers to determine whether they are Foreign Principals prohibited from acquiring or owning real property in Florida, whether they are subject to registration requirements, or whether they are required to dispose of such real estate. Non-compliance renders the real property subject to forfeiture and sale of such real property (subject only to the rights and interests of bona fide lienholders) and risks daily fines of \$1,000 and criminal penalties.

The Act also impacts every other purchaser of real property in Florida, including agricultural land, buildings, fixtures, and all other improvements to land after July 1, 2023, by requiring them to certify under penalty of perjury at closing that they are not a Foreign Principal and that they comply with the Act. The Act requires the Florida Real Estate Commission ("FREC") to develop affidavit forms for this requirement, but it has not yet done so. Caution suggests that counsel should prepare some substitute form of affidavit.

Foreign Principals include: (a) The governments and government officials of China, North Korea, Russia, Iran, Syria, Cuba and Venezuela, and any agency of or any other entity of significant control of such foreign country of concern ("FCC") (b) Any political party in an FCC, its subdivisions and members; (c) Any entity, subsidiary, partnership, and combination of persons organized under the laws of an FCC or having a principal place of business in an FCC; (d) Persons domiciled in an FCC who are not citizens or lawful permanent residents of the United States; and (e) Any of the foregoing having possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract, or otherwise in any of the foregoing (including trusts) formed for the purpose of owning Real Property in Florida. A person or entity that directly or indirectly has the right to vote 25 percent or more of the voting interests of the company or is entitled to 25 percent or more of its profits is effectively presumed to have the power to direct or cause the direction of the management or policies of a company.

Foreign Principals may not directly or indirectly "own, have a controlling interest in, or acquire by purchase, grant, devise, or descent, except a de minimus indirect interest..." any of the following: (a) Agricultural Land or an interest in Agricultural Land; and (b) Real Property on or within 10 miles of any Military Installation or Critical Infrastructure Facility. The Florida Department of Commerce ("FDOC") will provide a means, accessible through the FDOC's website at www.floridajobs.org, for individuals to determine the proximity of real property to a military installation or a critical infrastructure facility in Florida.

Regarding China, the prohibitions under the Act apply to all Florida Real Property. Chinese Foreign Principals may not directly or indirectly own, have a Controlling Interest in, or acquire by purchase, grant, devise, or descent any Real Property, except a de minimus indirect interest.

If you are, or represent, a Foreign Principal who owns real estate that is subject to the Act on July 1, 2023, such Foreign Principal can keep that Real Property but must register with the State of Florida by the end of 2023. (The precise deadline depends on the type of land). Forms for registration have not yet been developed as of the date of this article.

The prohibitions under the Act do not apply to Real Property acquired for diplomatic purposes allowed by the United States. Natural persons may purchase one residential real property up to 2 acres in size notwithstanding the Prohibitions if (i) the parcel is not within 5 miles of a Military Installation in Florida, (ii) the natural person has either a verified visa (not a tourist visa) or official documents that grant asylum or "authorizes the person to be legally present" in Florida, and (iii) the person acquires the property in their name. Although, foreign persons domiciled outside the United States typically

acquire real property in the name of an entity that is in turn held in the name of a non-US entity to avoid federal estate taxes, it appears that structure is not available under this exception. The exception is not available to Foreign Principals lawfully in Florida on a tourist visa.

Foreign Principals can acquire Real Property subject to the prohibitions under the Act after July 1, 2023, by gift, inheritance, enforcement of security interests, or collection of debts, but they must divest their Real Property within 3 years of purchase.

On November 13, the Florida Department of Commerce launched the **SecureFlorida** Portal, where foreign principals from foreign countries of concern must register property as required by Sections 692.203 and 692.204, Florida Statutes.

We look forward to the FREC and FDOC rulemaking, not only for required forms, but for additional guidance on the Act. If you have any questions, please contact Joseph Raia and Milton Vescovacci at Gunster by email to jraia@gunster.com and mvescovacci@gunster.com.

Contacts



Joseph L. Raia
Shareholder
Miami, FL
Email Joe
(305) 376-6052



Milton Vescovacci
Shareholder
Miami, FL
Email Milton
(305) 376-6041

Gunster
Brickell World Plaza
600 Brickell Ave., Suite 3500
Miami, FL 33131
www.gunster.com



This publication is for general information only. It is not legal advice, and legal counsel should be contacted before any action is taken that might be influenced by this publication.

Gunster, Florida's law firm for business, provides full-service legal counsel to leading organizations and individuals from its 13 offices statewide. Established in 1925, the firm has expanded, diversified and evolved, but always with a singular focus: Florida and its clients' stake in it. A magnet for business-savvy attorneys who embrace collaboration for the greatest advantage of clients, Gunster's growth has not been at the expense of personalized service but because of it. The firm serves clients from its offices in Boca Raton, Fort Lauderdale, Jacksonville, Miami, Naples, Orlando, Palm Beach, Stuart, Tallahassee, Tampa Bayshore, Tampa Downtown, Vero Beach, and its headquarters in West Palm Beach. With more than

260 attorneys and consultants, and over 270 committed professional staff, Gunster is ranked among the National Law Journal's list of the 500 largest law firms and has been recognized as one of the Top 100 Diverse Law Firms by Law360. More information about its practice areas, offices and insider's view newsletters is available at www.gunster.com.