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# Florida Places Restrictions on Real Estate Acquisitions by Certain Foreign Entities

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Florida Senate Bill 264 (the “Bill”) was signed into law on May 8, 2023, by Florida Governor Ron DeSantis. Having taken effect on July 1, 2023, the purported intention of the Bill is the protection of the State of Florida and its citizens against “foreign countr[ies] of concern.” These protections take the form of restrictions on the ability of certain foreign individuals and entities to own or acquire real property in Florida, along with certain reporting requirements for such individuals and entities who either currently own or obtain such real property. The countries listed as being “of concern” include (1) the Islamic Republic of Iran; (2) the Democratic People’s Republic of North Korea; (3) the Republic of Cuba; (4) the Venezuelan regime of Nicolás Maduro; and (5) the Syrian Arab Republic. Fla. Stat. § 692.201 (3). However, the Bill places particularly strict restrictions on foreign individuals and entities from the People’s Republic of China (the “PRC”) and members of the Chinese Communist Party (the “CCP”). Fla. Stat. § 692.204 (1)(a)(1–5). Accordingly, this article focuses on the restrictions placed on such individuals and entities.

## Restrictions on Real Estate Acquisitions by Proscribed Entities

Section 692.204 (1)(a) of the Bill describes the scope of restrictions placed on real estate ownership and acquisitions in Florida. This section states that the proscribed entities and individuals may not “directly or indirectly own, have a controlling interest in, or acquire by purchase, grant, devise, or descent **any interest**, except a de minimus interest, in real property” in Florida. The proscribed entities (the “Restricted Entities”) include:

- The PRC, the CCP, or any official or member of the foregoing
- Any other political party or member of a political party or a subdivision of a political party in the PRC

- A partnership, association, corporation, organization, or any other combination of persons organized under the laws of or having its principal place of business in the PRC, or a subsidiary of such entity
- Any person who is domiciled in the PRC and is not a citizen or lawful permanent resident of the United States
- Any person, entity, or collection of persons or entities described above having a controlling interest in a partnership, association, corporation, organization, trust, or any other legal entity or subsidiary formed for the purpose of owning real property in Florida at § 692.204 (1)(a)(1-5)

Any of the above-described Restricted Entities which directly or indirectly own an interest in Florida real estate prior to July 1, 2023, may continue to hold said interest but may not otherwise acquire an interest in any additional real estate on or after July 1, 2023. *Id.* at § 692.204 (3).

These broad prohibitions on the Restricted Entities are subject to only a few narrow exceptions. First, the statutes define a “de minimus indirect interest” as being any ownership which “is the result of the person’s or entity’s ownership of registered equities in a publicly traded company owning the land.” *Id.* at § 692.204 (1)(b). This exception only applies if the Restricted Entity (1) possesses less than 5% of the registered equities in the company or (2) has a noncontrolling interest in an entity controlled by a non-foreign company registered with the SEC as an investment adviser. *Id.* at § 692.204 (1)(b)(1-2). Note, though, that this exception only applies to the publicly traded entity as the real property owner (and arguably not any of its subsidiaries). Second, a visa-holding natural person who is otherwise a Restricted Entity under Section 692.204 may purchase a single residential property up to two acres in size so long as it is not within five miles of any military installation. *Id.* at § 692.204 (2)(a – c). Finally, an otherwise Restricted Entity may acquire real property after July 1, 2023, through “devise or descent, through the enforcement of security interests, or through collection of debts” so long as said entity or individuals divests themselves of such real property within three years. *Id.* at § 692.204 (5).

The Bill also creates reporting and registration requirements for Restricted Entities. Namely, any Restricted Entities that own or acquire more than a “de minimus indirect interest” in real property must register with the Florida Department of Economic Opportunity. Fla. Stat. § 692.204 (4)(a). Any such Restricted Entity failing to do so by January 31, 2024, is subject to a \$1,000-per-day penalty for late registration. *Id.* at § 692.204 (4)(b). Additionally, all purchasers of real property in Florida, whether proscribed by this section or not, must now provide an affidavit attesting that they are not a Restricted Entity as proscribed by Section 692.204. If any property is acquired in violation of Section 692.204, such real property is subject to forfeiture to the State of Florida. *Id.* at § 692.204 (7)(a).

The restrictions, reporting requirements, and registration requirements placed on entities and individuals from other foreign countries of concern are similar but more limited in scope. The list of proscribed individuals and entities for these other countries of concern is similar to those from the PRC. However, the restrictions placed on these proscribed individuals and entities is limited to the acquisition of a direct or indirect interest in agricultural land or any real property “on or within 10 miles of any military installation or critical infrastructure.” Fla. Stat. §§ 692.202 (1); 692.203 (1). The exceptions to these restrictions are also similar to those found under Section 692.204. *Id.* at §§ 692.202 (1)(a); 692.202 (4); 692.203 (1)(a); 692.203 (4); 692.203 (5).

## Impact and Legal Challenges

The implications of this legislation on Florida real estate transactions are potentially significant and far-reaching. Florida Senate Bill 264 clearly curtails the ability of Restricted Entities from acquiring even an indirect interest in Florida real property. The language of the Bill implies that this prohibition would apply to a Restricted Entity acquiring even a 1% indirect interest in Florida real property, even if acquired through an U.S. entity—unless the indirect interest is obtained through a less than 5% interest in a publicly traded company. The restrictions created by the Bill could also create concern for lenders with loans secured by real property

interests in Florida. Restricted Entities or their subsidiaries who attempt to enforce a security interest, such as foreclosing on a mortgage, in Florida real property will be forced to divest themselves of said interest within three years—severely limiting the value of the secured interest.

In response, a lawsuit has already been filed challenging the Bill. A case has been filed in the U.S. District Court for the Northern District of Florida styled as *Shen v. Simpson*. Case No. 4:23-cv-208-AW-MAF. The plaintiffs, a group of Chinese citizens residing in Florida and a Florida-based realty company, claim that the new statutes violate the U.S. Constitution and fair housing laws. Complaint at 17, *Shen v. Simpson*, No. 4:23-cv-208-AW-MAF (N.D. Fla. 2023). A hearing for a preliminary injunction was held on July 18, 2023.

For more information about Florida Senate Bill 264 and its implications for real estate ownership and acquisitions in the state, please contact the author of this article or any attorney with Frost Brown Todd's [Financial Services](#) industry team or [Real Estate](#) practice.

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