Oklahoma Law Creates Additional Burden to Purchasing Property in the State

Dec 12, 2023

Categories:

Hemp Legally Speaking Publications

Authors:

Andrea Hope J. Steel
Emma H. Mulvaney
Timothy E. Wieher

In response to concerns surrounding foreign ownership of property following the legalization of medical marijuana in Oklahoma, Senate Bill (SB) 212 was passed. However, the new law could have wider implications. SB 212 amended 60 Okla. Stat. § 121 (the "Act"), a law rooted in the state's Constitution prohibiting aliens or persons who are not citizens of the United States from owning land in Oklahoma. Prior to SB 212 going into effect, foreign owners could nonetheless acquire property indirectly through a business entity and remain in compliance with the Act, so long as such business entity was either formed in Oklahoma or licensed by the secretary of state to conduct business there (the latter being referred to as "domestication").[1]

SB 212 creatively closes this legal chasm with respect to foreigner-owned business entities that operate in federally illegal commerce in Oklahoma, regardless of whether such commercial operations may be legal within the state. Primarily, SB 212 instituted three changes to the Act: it (i) intensified foreign ownership restrictions by including in the prohibition, in addition to direct ownership, a prohibition on ownership of land in Oklahoma "indirectly through a business entity or trust," (ii) provided an express exclusion from the prohibition for entities "engaged in regulated interstate commerce in accordance with federal law," and (iii) created a procedural requirement of filing an affidavit for each deed.

In practical terms, effective November 1, 2023, to record a deed in Oklahoma, it must be accompanied by an affidavit certifying compliance with the Act by the purchaser as an exhibit to each deed, including corrective deeds. The required affidavits can be viewed and downloaded here.

These affidavits come in three formats: (1) for individuals; (2) for "exempt" businesses and trusts (those engaged in federally legal commerce, regardless of foreign ownership); and (3) for "non-

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

exempt" businesses and trusts (U.S. citizen or Oklahoma resident business owners unable – or unwilling – to certify as to the federally legal commercial operations requirement). In addition to selecting which form of affidavit to execute, every new property owner must certify in the affidavit that no funding source used in the conveyance was made in violation of the new law "or any other state or federal law." The affidavit forms also require the signer to acknowledge that making a false statement therein could result in criminal and/or civil penalties. These affidavits will be recorded in the real property records along with the conveyance deeds.

Who Is Eligible to Purchase Property in Oklahoma?

Under the Act and prior to the passage of SB 212, the following categories of persons may purchase property in Oklahoma:

- U.S. citizens;
- Native Americans born in the United States;
- Aliens or persons who are not American citizens, including through business entities or trusts, but who are or may become bona fide residents of Oklahoma; and
- Business entities formed under the laws of other states or countries, who become domesticated under the laws of Oklahoma through the Oklahoma secretary of state, as bona fide residents of Oklahoma.[2]

As of November 1, 2023, SB 212 eliminated the ability for foreigners engaged in federally illegal activities indirectly through business entities or trusts to acquire real property in Oklahoma.

Who Is Engaged in Regulated Interstate Commerce?

Business entities owned by a foreigner may find themselves reviewing their intended purposes when acquiring real property in Oklahoma, hoping to rely upon the interstate commerce exclusion, which requires certification that all of the entity's business activities

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

in Oklahoma are federally legal (as opposed to certifying as to citizenship/residency). Based on the guidelines and affidavits promulgated by the attorney general of Oklahoma, "engaged in regulated interstate commerce" means **either** (a) expressly permitted by federal regulation or federal law or (b) not prohibited by federal regulation or federal law. Importantly, the "exempt" business affidavit form also requires the affiant to acknowledge "that an entity engaged in or supporting the cultivation of marijuana in Oklahoma" does not qualify as engaging in regulated interstate commerce, but it interestingly fails to expand this express acknowledgment to marijuana manufacturing and sales. Of further concern, there is no indication as to what "supporting" marijuana operations may encompass, but it could very well reach lighting, vaping equipment and other ancillary businesses often affiliated with foreign ownership.

What if an Affidavit Is Not Executed?

If an affidavit is not executed by the purchaser, then the county clerk will not record the deed. While it is possible that the real estate transaction could close in the absence of a recorded deed, it would affect notice to third parties of ownership of the property and the ability to obtain title insurance and could lead to disputes over ownership.

Anticipated Impact of SB 212

On its face, SB 212 appears to be an expansion of the previous law, closing what many viewed as a loophole, with the new affidavit requirement likely impacting the timing and costs of real property transacting in Oklahoma. Unlike the recent Florida law, however, SB 212 contains a significant carveout for regulated interstate commerce, which may provide shelter to allow the vast majority of business entities to continue to purchase real estate in Oklahoma, exempt from the indirect foreign ownership prohibition. What remains to be seen is what other industries – similar to marijuana in that they may be legal intrastate but illegal federally – could be impacted, such as gambling/casinos or sports betting. Another unknown is what the criminal and/or civil repercussions might be if a

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

person makes false statements in the newly required affidavit. It is anticipated the state will issue regulations in the near future that will provide additional context. Lastly, overbroad or vague statutory language and overreaching laws/regulations are often subject to legal challenges, which could alter the enforceability of this new law if pursued.

For more information about Oklahoma SB 212 and its implications for real estate ownership and acquisitions in the state, please contact the authors of this article or any attorney with Frost Brown Todd's Financial Services industry team or Commercial Finance practice.

---

[1] *State ex rel. Cartwright v. Hillcrest Invs., Ltd.*, 1981 OK 27, 630 P.2d 1253.

[2] *State ex rel. Cartwright v. Hillcrest Invs., Ltd.*, 1981 OK 27, 630 P.2d 1253.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons