

Principles for Legislation Regarding Foreign Ownership of US Real Estate

Real estate transactions represent approximately 13% of U.S. gross domestic product. Given the importance of real estate to the U.S. economy, any law regarding foreign ownership should establish specific processes and procedures to protect valid property interests and avoid penalizing legitimate sellers, creditors, and future owners of property.

Impose Obligations Directly and Only on Buyers

Only buyers and their legal representatives have sufficient information to determine property ownership eligibility. If bills require reporting of a transaction to the state or other agency, this obligation should be on the buyer directly and should not be the responsibility of any other party.

State Laws Must Not Void Transactions

Any law must lay out a process for a forced divestment or forfeiture by a court of competent jurisdiction after a state agency brings an enforcement action. Unwinding a transaction via judicial proceeding allows legitimate interest holders and creditors (like mortgage and mechanics lienholders) to be made whole. State laws should expressly state that land titles are not invalid, impaired, or subject to forfeiture because of the foreign status of any former owner or other person having an interest in the property.

Designate an Appropriate State Enforcement Authority

To avoid harmful complications created by invalidating property transfers, legislation should give state agencies enforcement authority, providing investigative powers and establishing due process followed by voluntary or forced divestment of the real estate as appropriate.

Follow Existing State Divestment Procedures Like Forfeiture or Foreclosure Laws

The only remedy for violation of these laws should be a forfeiture or foreclosure type action brought by the state to divest the property, which results in an unappealable judgment.

Safeguard the Reliability of US Property Records

Relevant documents and/or court orders must be recorded by authorized state agencies within local land records. Recordation provides notice of enforcement actions and creates a continuous chain of title, which are necessary to protect future transactions.

Protect the Neutral Role of Title Insurance and Real Estate Settlement Professionals

The foreign ownership bills should not impose obligations that would threaten the role of the title industry as a neutral third party in real estate transactions. To that end, no legislation should require title insurance companies or their employees to make a determination as to the buyer's national identity, require reporting or the submission of data to a state agency, or impose extra-contractual, civil, or criminal liability for closing a prohibited transaction in good faith.