

Suggested Legislative Text for Bills Regarding Foreign Ownership of US Real Estate

State lawmakers are considering bills restricting the ability of certain foreign governments, entities, or individuals to buy property within the state. In some instances, bills prohibit ownership of certain types of property, such as farmland, or disallow property ownership with proximity to agricultural businesses, military bases, critical infrastructure, or other property deemed essential to national security.

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 ownership of US real estate should establish specific processes and procedures to protect valid property interests and avoid penalizing legitimate sellers, lienholders, and future owners of property.

To protect the real estate market and property rights, bills should incorporate the following:

1. Outline of the necessity of exercising state's police powers (include legislative findings as appropriate)

Sample legislative text: *In order to protect the health, safety, and welfare of all citizens of the state, and to protect the integrity and safety of [critical infrastructure, natural resources, and food and other essential agricultural products] from interference or control of foreign adversaries, the legislature, in exercise of its inherent police powers, does hereby enact as follows:*

2. Clear definitions of prohibited parties and affected properties

Definitions should be based on easily ascertainable information as it relates to both the prohibited purchasers and the affected properties. Avoid inadvertent inclusion of individuals, entities or governments based on broad definitions.

3. Express remedy for enforcement

Sample legislative text: *A transfer of an interest in land in violation of this section shall be subject to divestiture as set forth in this section.*

4. Identification of the enforcement authority and investigative powers

Sample legislative text: *The attorney general, upon the request of any person or upon receipt of any information which leads the attorney general to believe that a violation of this section may exist, may issue subpoenas requiring the appearance of witnesses, the production of relevant records and the giving of relevant testimony.*

5. Provide for divestment of property (via voluntary transfer or forced divestiture following established processes such as judicial foreclosure, receivership, or partition)

Sample legislative text: *On concluding, as a result of the investigation, that a violation of this section has occurred, the attorney general shall order the [foreign entity] to divest itself of all interests in the land within [x days/months/years]. If the [foreign entity] fails to divest itself of all interests, or if an interest holder timely objects to the order of divestiture, the attorney general shall commence an action in [superior] court. Except in the case of dismissal, the court shall order that the property be sold pursuant to [insert appropriate state statute for judicial foreclosure, receivership, or partition action under a power of sale].*

6. Place obligation for compliance on buyers, as only they can determine purchaser eligibility

Sample legislative text: *The responsibility for determining whether an entity is subject to this section rests solely with the [foreign entity] and the attorney general and no other individual or entity. An individual or entity who is not a [foreign entity] shall not be required to determine or inquire whether another person or entity is or may be subject to this section, and shall bear no civil or criminal liability under this section.*

7. Protect lien holders from loss or litigation

Sample legislative text: *Proceeds of the sale shall be disbursed in the following order:*

The payment of authorized costs of the sale, including all approved fees and expenses of the referee and any taxes and assessments due.

The payment, in an amount approved by the court, to the [attorney general] for reimbursement of investigation and litigation costs and expenses.

To bona fide lien holders, in their order of priority, except for liens which under the terms of the sale are to remain on the property.

To the [restricted foreign entity] [state general fund].

8. Protect future property owners from loss or litigation

Sample legislative text: *No title to an interest in land shall be invalid or subject to divestiture by reason of the violation of this section by any former owner or other person holding or owning a former interest in such land.*

9. Safeguard the reliability of US property records

Sample legislative text: *Upon commencement of an action under this section, the attorney general shall promptly record a notice of the pendency of the action in the [local land records]. Upon the entry of order for the sale of the property under this section, the attorney general shall promptly record a copy of such order in the [local land records].*

10. Make restrictions prospective

Sample legislative text: *This section shall apply only to the transfer of an interest in land on or after the effective date of this act.*