

Florida Law Restricting Florida Real Estate Ownership by Persons or Entities from China Is Effective, Faces a Possible Challenge from the U.S. Department of Justice

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Introduction

On May 8, 2023, Florida Governor Ron DeSantis signed into law Florida Senate Bill 264 (CS/CS/SB 264), Interests of Foreign Countries (the “**Bill**”), to putatively protect “American interests from foreign threats,” claiming that “Florida is taking action to stand against the United States’ greatest geopolitical threat – the Chinese Communist Party.”

Effective July 1, 2023, the Bill (i) places significant and specific restrictions on Florida real-property ownership by persons and entities from the People’s Republic of China (“**PRC**”) and (ii) creates registration and attestation requirements for such persons depending on whether such persons are owners or buyers of Florida real property prior to the effective date of the Bill.

Restriction on the Purchase or Acquisition of Real Property by Persons or Entities from the PRC

The Bill creates section 692.204 of the Florida Statutes and states that the following persons or entities “may not directly or indirectly **own**, have a **controlling interest in**, or **acquire** by purchase, grant, devise, or descent any interest, except a de minimis indirect interest, in real property” in Florida:

- The PRC, the Chinese Communist Party, 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.

The term “de minimis indirect interest” is narrowly defined. It means any ownership that is the result of such person’s or entity’s ownership of registered equities **in a publicly traded company** owning the land **and** if the person’s or entity’s ownership interest in the company is either (i) less than five percent (5%) in the aggregate in

multiple classes of registered equities or (ii) a noncontrolling interest in an entity controlled by a company that is **both** a U.S.-registered investment adviser and not a foreign entity.

Notably, a person or entity described above that directly or indirectly owns or acquires any interest in Florida real property **before July 1, 2023**, may continue to own or hold such real property, but may not purchase or otherwise acquire by grant, devise, or descent any additional real property in Florida. However, a person or entity described above may acquire real property **on or after July 1, 2023**, by devise or descent, through the enforcement of security interests, or through the collection of debts only if such person or entity sells, transfers, or otherwise divests itself of such real property within three (3) years after acquiring the real property unless the person or entity is exempt under section 692.205 of the Florida Statutes.

Exceptions to the Restriction on the Purchase or Acquisition of Real Property by Persons or Entities of the PRC

Notwithstanding the above restrictions, section 692.204(2) of the Florida Statutes provides that a natural person may purchase one (1) residential real property that is up to two (2) acres in size if each of the following conditions is satisfied:

- The parcel is not on or within five (5) miles of any military installation in Florida.
- The person has a current verified United States visa that is not limited to authorizing tourist-based travel or official documentation confirming that the person has been granted asylum in the United States and such visa or documentation authorizes the person to be legally present within Florida.
- The purchase is in the name of the person who holds the visa or official documentation.

Certain Requirements and Penalties

Section 692.204(4) of the Florida Statutes creates a registration requirement with the Department of Economic Opportunity (the “**Department**”) if such person or entity owns or acquires more than a de minimis indirect interest in real property in Florida. Failure to timely file a registration statement with the Department is subject to a “civil penalty of \$1,000 for each day that the registration is late.” Registration of the property or property interests owned or acquired **before July 1, 2023**, must occur **by December 31, 2023**, and will be “late 30 days after January 31, 2024.” Likewise, a person or entity that owns or acquires real property or an interest in real property (other than a de minimis indirect interest) **on or after July 1, 2023**, must register within 30 days after the property or interest is owned or acquired. The Department may place a lien against the unregistered real property for the unpaid balance of any penalties assessed as a result of failing to register.

In addition, section 692.204(6) of the Florida Statutes requires that a buyer of real property in Florida, at the time of purchase, provide an affidavit signed **under penalty of perjury** attesting that the buyer is not a person or entity of the PRC and is in compliance with the requirements of section 692.204. Failure to comply with such affidavit requirement neither affects the title or insurability of the title for the real property nor subjects the closing agent to civil or criminal liability (unless the closing agent has actual knowledge that the transaction will violate section 692.204 of the Florida Statutes).

Significantly, if any real property is owned or acquired in violation of section 692.204, the real property may be forfeited to the State of Florida. Furthermore, purchasers and sellers may be criminally liable under section 692.204. Namely, a person who “knowingly sells real property or any interest therein” in violation of such section commits a **misdemeanor of the first degree**, punishable by up to one (1) year of imprisonment and a \$1,000 fine, and a purchaser of land in violation of such section commits a **third-degree felony**, punishable by up to five (5) years in prison and a \$5,000 fine.

Challenges and Implications

Although Governor DeSantis signed the Bill to protect “American interests from foreign threat,” some groups are concerned about its constitutionality and potential discriminatory impact. On May 22, 2023, a group of Chinese citizens living in Florida, and represented by the American Civil Liberties Union, filed a lawsuit in the U.S. District Court for the Northern District of Florida, arguing that the Bill violates the U.S. Constitution and the Fair Housing Act.

Soon thereafter, on June 27, 2023, the U.S. Department of Justice filed a [“Statement of Interest”](#) stating that the Bill violates the Fair Housing Act and the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, and that such “unlawful provisions will cause serious harm to people simply because of their national origin, contravene federal civil rights laws, undermine constitutional rights, and will not advance [Florida’s] purported goal of increasing public safety.”

Winston will continue to monitor developments and provide friends of the firm with updates as they become available. Winston is focused on providing guidance to foreign investors and entities who invest in or currently own real estate in Florida. Please contact your Winston relationship partner should you have any questions or to request further information.

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