



To: All Florida Policy Issuing Agents of WFG National Title Insurance Company  
From: WFG Underwriting Department  
Date: June 26, 2023  
Bulletin No.: FL 2023-26  
Subject: Summary of Foreign Countries of Concern Real Estate Restrictions

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## The Law

On May 8, 2023, Florida Governor Ron DeSantis signed into law [Florida Senate Bill SB 264 \(FL 264\), Interests of Foreign Countries](#). Laws of Florida Chapter No. 2023-33. The law takes effect July 1, 2023.

Among other things, and over-simplified, the law will bar a “Foreign Principal” -- basically any non-US citizen or lawful permanent resident or any entity with any non-*de minimus* tie to specified “foreign countries of concern” (China, the Venezuela regime of Maduro, Syria, Russia, Iran, North Korea, and Cuba) -- from acquiring any interest in most Florida real property<sup>1</sup> -- unless one of two exemptions apply.

## The Exceptions

A “Foreign Principal” of a “foreign country of concern” may acquire real property that would otherwise be restricted if:

- The Acquisition is for Diplomatic purposes approved by the federal government; or
- Limited Residential Exception - If the Foreign Principal buyer is a ‘natural person’, they may still purchase one residential real property, up to 2 acres in size, if all of the following apply:
  - The parcel is not on or within 5 miles of any military installation;
  - The Buyer 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

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<sup>1</sup> The law restricts acquisition of an interest in any real property within 10 miles of any military installation or critical infrastructure facility (defined to include any chemical manufacturing facilities, refineries, electrical power plants, water treatment facilities, wastewater treatment facilities, liquid natural gas terminals, telecommunications central switching offices, gas processing plants, seaports, spaceport territories, and airports).

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granted asylum in the United States and such visa or documentation authorizes the person to be legally present in Florida;

- The purchase is in the Buyer's name, i.e. the name of the person who holds the visa or official documentation described above.

**What happens if a Foreign Principal owns or acquires a property (without complying with one of the exceptions):**

- Property acquired in violation of this law are subject to civil forfeiture to the State.
- Violations may subject both the buyer and seller to criminal penalties – a 2<sup>nd</sup> degree misdemeanor, unless involving a Chinese foreign principal, in which case it may be a 3<sup>rd</sup> degree felony for the buyer and a 1<sup>st</sup> degree misdemeanor for the seller.
- The law does NOT require divestment of real estate owned before July 1, 2023, but Foreign Principals who own restricted categories of real estate after June 1, 2023 or who acquire real estate pursuant to an exemption must “register” their ownership with the Department of Agriculture (if taxed as ag land) or with the Department of Economic Opportunity (if within 10 miles of a restricted site), or potentially with both.
- The failure to register will subject the property owner to fines of \$1,000 per day, which may become liens on the property. The deadline for filing is not entirely clear in the law. The earliest deadline shown is December 31, 2023.

**What does this mean for Title Insurance?**

- The law does not “void” the acquisition of the property, and any forfeiture would be a post policy event, so not a policy claim.
- The law includes safe harbor language providing “The failure to obtain or maintain the affidavit does not: 1. Affect the title or insurability of the title ... [for the real property]; or 2. Subject the closing agent to civil or criminal liability, unless the closing agent has actual knowledge that the transaction will result in a violation of this section.”
- So no additional exceptions or policy language is required at this time

**What does this mean for Closings?**

- **New Affidavit Required.** After July 1, 2023, **EVERY BUYER** of real property must give an affidavit certifying that they are not a “Foreign Principal” of a “foreign countries of concern” and that they are “in compliance” with the law. You need to keep this for your file and provide copies to your sellers (as they have potential liability for not getting it)
  - The Florida Real Estate Commission was directed to adopt rules and a form of affidavit to be used. All indications are the F.R.E.C. will not adopt an affidavit form or rules until well after July 1. The Title Insurers operating in Florida worked together to create an explanatory notice and affidavit forms that could be used in the interim. Those forms have been adopted by the Florida Land Title Association and are attached.
  - We recommend you add those to your production software and make that a part of your closing package. Have the buyer sign the Notice and the appropriate Affidavit and keep those in your file.

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- **The Limited Residential Exemption.** If an individual buyer advises that they qualify as a “Foreign Principal” but wants to close on a single residential property pursuant to the residential exemption:
  - You should obtain copies of their United States visa, confirm that is not limited to authorizing tourist-based travel or obtain copies of other official documentation confirming that the person has been granted asylum in the United States.
  - **WE RECOMMEND NON-ATTORNEY AGENTS DO NOT EVEN ATTEMPT TO HELP A BUYER DETERMINE IF A BUYER OR A PROPERTY QUALIFIES FOR THE RESIDENTIAL EXEMPTION.**
    - The law places the burden of determining compliance with the residential exemption on the Buyer, not on the title agent or closer. It is a legal determination that non-attorney agents are not equipped to make.
    - The definition of Military Installation as a “base, camp, post, station, yard, or center encompassing at least 10 contiguous acres that is under the jurisdiction of the Department of Defense or its affiliates” potentially includes far more than the obvious military bases and National Guard Armories. Florida was once dotted with “secret” cold war era missile and air defense facilities, and a spot check of property appraiser records suggests that known military bases are, as often as not, coded as owned by the United States rather than a military branch.
    - The Residential Exemption requires a measurement of 5 miles from the nearest Military Installation, and we simply have no way of knowing where to measure 5 miles from.
- The Department of Agriculture, the Department of Economic Opportunity and the Florida Real Estate Commission have each been directed to produce rules to implement this law. We hope that those rules will clarify some of the ambiguities and unknowns in the law and will update this bulletin as those rules come out.

**Pending Challenge:**

This law has been challenged on Constitutional, Supremacy Clause and other grounds in [Shen v. Simpson](#), Northern District Florida 4:23-cv-00208-AW-MAF. A preliminary injunction on enforcement of the law has been requested. The Court has set a hearing date of July 18, 2023. So this may change shortly.

We know that there are a lot of ambiguities and uncertainties about this law. The WFG underwriters are available to talk you through some of the issues. But unfortunately, we don't have great answers either.

Click here for a copy of the Bill:  
[SB 264](#)

Click here for the Notice and Buyer's Affidavits:  
[Foreign Principal Notice](#)  
[Foreign Interest Affidavit – Entity](#)  
[Foreign Interest Affidavit – Individual](#)

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