

Senate Bill 212 (2023) - Affidavit for Ownership of Land

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Alien Ownership of Land - General

- Common law: aliens could own land until their alienage was established in a judicial proceeding. Then, escheated to the Crown.
- 48 U.S.C. § 1501
 - No alien or person who is not a citizen of the United States, or who has not declared the intention to become a United States citizen shall acquire title or own any land in any of the Territories.
 - Exceptions
- States
 - Full ownership rights
 - Limited ownership rights
 - Oklahoma



Alien Ownership of Land - Oklahoma

- Oklahoma Constitution – Article 22, § 1; Oklahoma Statutes – title 60, § 121
 - *Generally*, no alien or person who is not a citizen of the United States shall acquire title to or own land in the state
 - Legislature to establish forfeiture provisions
 - Exceptions



Alien Ownership of Land – Oklahoma – Exceptions

- Native Americans born within the United States
- Non-citizens of the United States who are or may* become bona fide residents of the state.
 - If residency ceases, must dispose of the property within five (5) years
- Alien corporations that domesticate within the State (*State ex. Rel Cartwright v. Hillcrest Investments, Ltd.* (1981))
- Business entity engaged in regulated interstate commerce in accordance with federal law (Senate Bill 212, 2023)
 - Activities are expressly permitted by federal law or regulation, or
 - Not prohibited by federal law or regulation



Senate Bill 212 (2023)

- Effective November 1, 2023; not retroactive
- Exception to ownership provisions: business entity engaged in regulated interstate commerce in accordance with federal law
- *Any* deed that is recorded with the county clerk shall include an affidavit attesting to compliance with state laws on foreign ownership of land
- Executed by the person, entity or trust coming into title
- Attorney General
 - Duty to promulgate separate affidavits for individuals and business or trust
 - May establish exemptions for certain deeds



Affidavits - <https://www.oag.ok.gov/public-forms>

- Individual
 - Either a U.S. citizen or an alien who is or may become a bona fide resident,
 - Acknowledge 60 O.S. § 121 and the acquisition is compliant, and
 - Criminal and civil penalties -15 O.S. § 85
- Non-exempt Business or Trust
 - Most of the individual requirements +
 - Entity name and affiant's role, and
 - Authorized to record the affidavit
- Exempt Business or Trust
 - Non-exempt requirements, but exempt because engaged in regulated interstate commerce, as defined



Miscellaneous

- Responsibilities
 - Buyer is responsible for compliance and signing the affidavit
 - Attorney General or the district attorney of the county where the land is located is responsible for enforcement
- Who must sign the affidavit?
 - Any and all grantees
- How is “land” defined?
 - Surface, soil, rock or other substance and pore space – 60 O.S. § 6
- How is “deed” defined?
 - Unless the Attorney General finds it necessary, any and every deed



Miscellaneous

- Does Senate Bill 212 limit who is eligible to purchase property?
 - No
- Why are there three affidavits?
 - Statute requires separate affidavits for an individual and a business/trust
 - Audits
 - Exemption for an entity whose activities are engaged in regulated interstate commerce, as defined
- Can the affidavits be modified or altered?
 - Generally, no. Example: removing the criminal and civil penalties



Miscellaneous

- What if the person refuses to execute the affidavit?
 - The county clerk will not record a deed without the affidavit
- Does the Affidavit require an original signature?
 - Yes. However, permitted are electronic signatures, electronic recording and Remote Online Notary
- Will the failure of a deed to contain an affidavit affect marketability?
 - Title insurance agents should contact their underwriter



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