

Georgia Takes a Stand: Buyers From Bad Actor Countries May Be Blocked From Buying Land!

Stephen B. Schrock, Taylor S. Benatar, Melanie Tate

Two parallel bills introduced in the 2024 Georgia legislative session are aimed at prohibiting foreign land ownership by entities, directly and indirectly, domiciled in adversary countries such as China, Cuba, Iran, North Korea, Russia and the Maduro Regime of Venezuela. To add teeth to this legislation, the bills seek to make it a criminal felony for any individual who violates the proposed law. The proposed legislation represents a growing concern related to the ownership of land by foreign entities formed under the laws of these bad actor countries. Through [House Bill 1093](#) and [Senate Bill 420](#), Georgia is seeking to prohibit the ownership of agricultural land and land near military bases and installations by “foreign adversaries.” Georgia is one of many states that introduced or enacted laws recently to address the potential risks of increasing foreign ownership of real estate. Proposed laws at the federal level are also being introduced to expand existing U.S. reporting requirements.

These laws reflect an increasing concern over national security and correspond with increased land ownership by foreign entities. From 2017-2022, foreign holdings increased by an average of almost [2.9 million acres](#) per year. In contrast, from 2012-2017, foreign holdings increased by an average of only 0.6 million acres per year.

Proposed Georgia Laws

The proposed Georgia House and Senate bills both prohibit any nonresident alien from acquiring, directly or indirectly, any possessory interest in agricultural land or land within a certain radius (25 miles in the Senate bill and 10 in the House bill) of a military base, military installation, or military airport. The bills include certain exceptions, including residential property purposes. Each bill further provides that any

nonresident alien with any possessory interest in agricultural land prior to the proposed effective date of the law must dispose of such possessory interest no later than June 30, 2027 (unless they terminate their nonresident alien status). In addition, the bills each provide that any real estate broker engaged by a client who is a prospective buyer or seller of a possessory interest in agricultural land must timely disclose to said client the requirements and limitations of the proposed law. Finally, to ensure that the proposed law is complied with, the bills each provide that any individual who intentionally violates the law shall be guilty of a felony and shall be punished by a fine of not more than \$15,000.00 or imprisonment for not less than one year nor more than two years, or both.

Definition of “Nonresident Alien”

The proposed bills define “nonresident alien” to include any business entity domiciled in a country whose government is designated as a foreign adversary by the United States Secretary of Commerce or any business entity domiciled in the U.S. but owned at least 25% by any business entity domiciled in a country whose government is designated as a foreign adversary. Currently, the [Secretary of Commerce](#) lists China, Cuba, Iran, North Korea, Russia and the Maduro Regime of Venezuela as foreign adversaries.

Definition of “Agricultural Land”

The bills define agricultural land as “any land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or other horticultural products, but does not include any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use.” Notably, the statute bases its definition on land

Georgia Takes a Stand: Buyers From Bad Actor Countries May Be Blocked From Buying Land!

capability for agricultural use rather than its current use for agricultural purposes. The second consideration is zoning, with any lands zoned for non-agricultural uses excluded from the definition.

Based on these definitions, the bills' prohibitions would extend to situations beyond a direct farmland purchase by a foreign entity, and land sellers should carefully review the ownership of the entity purchasing land as well as the capability of the land and how it is zoned, regardless of its current use.

Laws Adopted by Other States

With House Bill 1093 and Senate Bill 420, Georgia joins a growing list of states restricting land acquisition by foreign entities. [Fifteen states have enacted legislation in the past year](#), and around half now have some kind of foreign ownership legislation. Some states have prohibitions like Georgia's law, while others only impose reporting obligations after acquisition.

Federal Reporting Requirements

At the federal level, proposals in Congress would further expand the current extensive and complex requirements of the Agricultural Foreign Investment Disclosure Act (AFIDA) and the Committee on Foreign Investment in the United States (CFIUS).

AFIDA

AFIDA requires any foreign persons (not just those from countries considered adversaries) who acquire or transfer an interest in agricultural land to report the transaction to the Secretary of Agriculture. Like the proposed Georgia bills, the definitions used in the Act cover more transactions than straightforward purchases of agricultural land by foreign persons. Foreign persons can include domestic entities depending on the percentage of their foreign ownership, and the definition of agricultural land is expansive enough to include [vacant land](#) intended for development. This Act has faced [criticism](#) recently,

and proposed [legislation](#) would require additional reporting and improve the disclosure process.

CFIUS

CFIUS real estate regulations allow the committee to review certain transactions involving foreign persons gaining rights to any type of real estate, not just land. When reviewing transactions, CFIUS can take actions to mitigate any national security risks, including unwinding a transaction completely. Covered real estate includes property near certain military installations, with the amount of covered property increasing in the last year to add additional military bases. Proposed bills in Congress would give CFIUS more overview of agricultural transactions. For example, the [Food Security is National Security Act of 2023](#) would place the Secretary of Agriculture and the Secretary of Health and Human Services on CFIUS and require CFIUS to consider the effects of a transaction on the security of U.S. food and agriculture systems.

Conclusion

The proposed Georgia laws are part of a widespread effort to mitigate the perceived potential risk related to foreign ownership at both the state and federal levels. If either of the Georgia bills are passed by both houses and are signed into law by Georgia Governor Brian Kemp, commercial real estate sellers of land for agricultural or industrial and other uses near military installations will need to do their due diligence on foreign buyers and should be aware of how these changing laws may affect the marketability and value of their real estate holdings if the pool of buyers is limited, those nonresident aliens who currently own agricultural land need to be aware that they must sell their interest in such land within three (3) years unless they somehow change their nonresident alien status, and real estate brokers will need to make sure to disclose to their clients the requirements of the law. Most importantly, everyone should be aware that if you violate this law, you are guilty of a criminal felony punishable by jail time and/or payment of a fine.

Georgia Takes a Stand: Buyers From Bad Actor Countries May Be Blocked From Buying Land!

For More Information

For more information, please contact:

Stephen B. Schrock

Partner, Real Estate

404.541.2909

Stephen.Schrock@ThompsonHine.com

Taylor S. Benatar

Managing Associate, Real Estate

404.407.3610

Taylor.Benatar@ThompsonHine.com

Melanie Tate

Associate, Real Estate

404.407.3617

Melanie.Tate@ThompsonHine.com

This article may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2024 THOMPSON HINE LLP. ALL RIGHTS RESERVED.