

ISSUE SPOTLIGHT

Foreign Buyer Restrictions

November 2023

30-Second Situation

As the largest economy in the world and a land of immigrants, the U.S. attracts people from across the globe to live, work, and study. International clients are an important market served by REALTORS®, and foreign business and investments can provide a boon to local economies. However, several states, including [Florida](#), [Virginia](#), [Montana](#), [Tennessee](#), [Texas](#), [Georgia](#), [Kentucky](#), [Kansas](#), and [Oklahoma](#), have introduced or passed legislation prohibiting individuals associated with certain countries from purchasing real estate, citing national security concerns.

Key Takeaways

- Many states are introducing or passing legislation to restrict real estate purchases by foreign buyers. If your state has not already considered legislation, be aware that it could be introduced soon as we expect the issue will continue to be raised in future legislative sessions.
- Consider a wide variety of coalition partners in your advocacy efforts on this issue, including multicultural real estate groups and the broader business community.
- Consider fair housing implications. Provide education and training to help REALTORS® protect themselves from increased professional liability.

Headlines

NORTH DAKOTA: [Fufeng Group](#), a food manufacturer based in Shandong, China, bought 370 acres of farmland near Grand Forks in 2021 for a wet corn milling plant. The land is just 12 miles from [Grand Forks Air Force Base](#), home to some of the nation's most sensitive military technology and a new [space networking center](#), which U.S. Senator John Hoeven has described as the backbone of global U.S. military communications. While there was bipartisan concern, the federal government did not have the jurisdiction to stop the project, but the City of Grand Forks stepped in and [cancelled its development deal](#) with Fufeng. The Base was then added to a list of several sites requiring nearby land purchases to undergo national security review by the [Committee on Foreign Investment in the U.S. \(CFIUS\)](#).

TEXAS: [Sun Guangxin](#), a Chinese real estate billionaire, bought roughly 140,000 acres to build a wind farm in 2021. The acreage is located near the Mexican border and is also close to [Laughlin Air Force Base](#), a training site for military pilots. The project created speculation that Sun could potentially tamper with or shut down the Texas energy grid and gather military intelligence from the nearby air force base. [Critics](#) state that Sun has ties to the Chinese Communist Party and authorities in Xinjiang. The purchase and development plans raised significant concerns with the public, resulting in a [lawsuit](#) and [legislation](#) to halt the project.

Federal Landscape

The [Committee on Foreign Investment in the United States](#) (CFIUS), an interagency committee chaired by the Secretary of the Treasury, oversees national security risks in foreign direct investment. In 2018, [the Foreign Investment Risk Review Modernization Act](#) (FIRRMA) expanded the jurisdiction of CFIUS to address growing national security concerns over foreign purchases of real estate.

Specifically, FIRRMA added new types of [covered transactions](#) to CFIUS jurisdiction, including a purchase, lease, or concession by or to a foreign person of real estate located in proximity to sensitive government facilities.

Congress has also taken interest in the issue, with members of both the House and Senate introducing several bills regarding ownership of agricultural land by individuals from certain countries.

Concerns for REALTORS®

Liability for Failure to Comply with Foreign Ownership Laws

In Florida, criminal penalties are provided for a closing agent who fails to secure an affidavit from a buyer attesting that neither they nor the property are covered by the prohibition.

Fair Housing Act Violations

Foreign buyer laws may cause sellers – and the REALTORS® who work with them – to discriminate on the basis of national origin or adopt practices that have a disparate impact based on national origin.

REALTORS® may be held liable under the [Fair Housing Act](#) for their own discriminatory acts, even if taken at a client's directive, or for the discriminatory acts of their clients.

For example, in a state that prohibits selling property to anyone domiciled in China, sellers might avoid engaging with anyone from China or any Asian buyers, either out of concern that they could unintentionally run afoul of the law or to avoid spending time with a prospective buyer who may be prohibited from buying. A REALTOR® could risk liability under the Fair Housing Act by engaging in discriminatory conduct at the direction of the seller, such as refusing to show a property to Asian buyers at the seller's request, or by avoiding involvement in transactions with buyers who appear to be from countries of concern under state law.

If REALTORS® decide to implement additional documentation requirements or screening questions in response to these laws, they must impose the same requirements on all prospective buyers, regardless of their apparent national origin. If REALTORS® decide to provide notice of these laws, the notice should make clear that the REALTOR® is merely providing notice of requirements recently imposed by state law. The notice should also directly quote the relevant provisions of the law.

Client Base Impacts

International buyers and sellers are an important client base for REALTORS®. NAR's [2022 Profile of International Transactions in U.S. Residential Real Estate](#) revealed the top foreign buyers of U.S. residential property were Canada (11%), Mexico (8%), China (6%), India (5%), Brazil (3%), and Columbia (3%). China was the largest foreign buyer in terms of dollar volume of homes purchased. Florida was the top destination for foreign buyers (24%), followed by California (11%), Texas (8%), Arizona (7%), New York (4%), and North Carolina (4%). The dollar volume of residential purchases by foreign buyers during the survey was [\\$59 billion](#), accounting for 2.6% of existing-home sales.

Economic Impacts

Many laws would prohibit businesses from the listed countries from leasing property in various locations. For example, Georgia's proposed bills would deny Chinese companies access to ports or air freight terminals. China buys \$27 billion in Georgia products annually, but Chinese companies would be barred from leasing cold-storage facilities or export warehouses, or cargo bays and slips at ports and airports.

Case Study: Florida

One of the most widely discussed state laws regarding foreign buyer restrictions is Florida's [SB 264](#), which took effect July 1, 2023. The law restricts real property ownership by certain individuals and entities associated with "foreign countries of concern," including China, Russia, Iran, North Korea, Cuba, the "Venezuelan regime of Nicolás Maduro," and Syria. Specifically, the law prohibits foreign principals from owning or acquiring agricultural land or real property within 10 miles of a military installation or critical infrastructure.

Challenges have been raised to the law on the grounds that it allows sellers of real estate to discriminate against foreign purchasers and would establish a “discriminatory housing practice” in violation of the Fair Housing Act. The [Equal Protection Clause](#) of the U.S. Constitution prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” In a Statement of Interest, the U.S. Department of Justice [wrote](#) the law “violates the Equal Protection Clause because it discriminates on the basis of alienage and national origin and is not narrowly tailored such that it survives strict scrutiny.”

What REALTORS® Are Doing

[Florida REALTORS®](#) hosted a webinar in June 2023 to speak with 6,000 members about the new law’s impact on property sales. To help with compliance, the association updated Florida REALTORS®/Florida Bar (FR/BAR) contracts, the Contract for Residential Sale and Purchase (CRSP) contract and an addendum, the CFBA-1, and the Vacant Land Contract and Commercial contract.

Webinar attendees were instructed not to offer advice about the new law, and that the penalties for noncompliance can be severe for buyers, sellers, and possibly real estate licensees. They repeated the phrase, “Don’t be the source of the information – be the source of the source.” Agents were advised not to volunteer information beyond the details now outlined in the contracts and new addendum. Members were also instructed not to ask buyers questions about their national origin to avoid any potential violations of the Fair Housing Act.

Current Status

A group of [Chinese nationals](#) who are lawful residents of Florida filed a lawsuit in May 2023 challenging [SB 264](#) as unconstitutional and a violation of the Fair Housing Act. Litigation is ongoing.

Case Study: Georgia

Two bills ([H.B. 452](#) and [S.B. 132](#)) proposed in Georgia in 2023 sought to limit foreign ownership of real estate, including nonresident aliens from China (including Hong Kong), Cuba, Iran, North Korea, Russia, and “Venezuelan politician Nicolás Maduro (Maduro Regime),” as well as business entities from one of those countries or businesses owned in majority by an entity from such a country.

The bills would prohibit any possessory interest in agricultural property, or any property located within a 25-mile radius of a military base, military installation, or military airport. There are 12 active military facilities spread across Georgia, and each major city is within 25 miles of a military facility. Both of Georgia’s oceanic shipping ports, all international air cargo airports, and most inland ports also fall in this radius.

Many concerns have been raised about the legislation. Both bills require discrimination based on national origin, which violates the Fair Housing Act. For example, a landlord would be barred from renting to a Chinese or Russian citizen, even if that person was in the U.S. lawfully. A Chinese student enrolled at Georgia Tech could not rent an apartment or move into a dorm room.

The bills would also require landlords or licensees to ask about ethnicity and citizenship, but federal law prohibits such questions in residential transactions. Complying with the state law could put a licensee at risk of a lawsuit under the federal Fair Housing Act, while failing to ask about ethnicity would put a licensee in violation of the state law.

What REALTORS® Are Doing:

The [Georgia Association of REALTORS®](#) publicly raised concerns about the bills, regarding the professional liabilities for REALTORS® outlined above as well as the potential for large-scale, negative economic impacts in Georgia. The REALTORS® also proposed amendments and changes to the bills, including:

- Adjust to a prohibition against acquisition of a fee interest, rather than merely a possessory interest, to eliminate the concern regarding leases of commercial facilities.
- Amend the bills to apply only to non-residential property, taking the legislation out of the coverage of the Fair Housing Act.
- Eliminate the 25-mile exclusionary zone and replace it with a specific activity or usage prohibition.

Current Status:

The bills were not passed into law in 2023, but each bill is still viable and could be considered in the 2024 session. The Georgia Association of REALTORS® continues to monitor the legislation and advocate for amendments.

Case Study: Texas

Legislation was proposed in Texas in 2023 to limit foreign ownership of real estate, including [HB 2788](#), [HB 3470](#), [HB 4006](#), [SB 147](#), [SB 552](#), [SB 1441](#). Most of the bills were written in general terms, which would make compliance and enforcement difficult. For example, the people or entities to whom the various prohibitions were directed were not well-defined and were merely listed as “businesses, government entities or their agents,” or similar terms. There were also concerns about the requirement to identify an individual’s nation of origin during a sales transaction, which would violate the federal Fair Housing Act.

Most of the bills did not advance out of committee. SB 147, however, passed the Senate and was referred to committee in the House. A comparison of the two versions of the bill – the [introduced version](#) and the [engrossed version](#) passed by the Senate – shows how legislators tried to address various issues.

As introduced, SB 147 would have applied to businesses, governmental entities, or individuals from China, Iran, North Korea, or Russia. The version passed by the Senate would not have applied to U.S. citizens or lawful permanent residents but to individuals, governmental entities, or business entities from “a country identified by the United States Director of National Intelligence as a country that poses a risk to the national security of the United States in each of the three most recent Annual Threat Assessments of the U.S. Intelligence Community.”

The Introduced version would have applied to any real property, while the engrossed version would have applied to “agricultural land.” The introduced version would have prohibited the purchase or other acquisition of title by individuals or entities from prohibited nations. The engrossed version had these prohibitions but would not have applied to an individual’s residence homestead or a leasehold interest in land or improvements constructed upon a leasehold. The introduced version also did not outline enforcement, while the engrossed version would have been enforced by the Attorney General.

What REALTORS® Are Doing:

[Texas REALTORS®](#) testified before the Texas Senate State Affairs Committee on SB 147, which would have banned foreign governments and companies from owning agricultural land in Texas. The association raised multiple concerns, including challenges to identifying ownership of business entities, legal problems in seeking information about a person’s country of origin in a real estate transaction, and enforcement issues after a violation.

REALTORS® also worked with other stakeholders, such as title companies and construction companies, as well as members of the Chinese American community in Texas. In response to this coalition, the legislation’s sponsors made amendments to address some of the issues raised.

Current Status:

SB 147 did not become law, but it provides an example of the type of legislation that may be introduced in the future. If legislators are interested in revisiting this matter, they would need to introduce new bills in the next regular session in 2025.

NAR Resources

The NAR State and Local Issues Committee hosted a [webinar](#) on foreign buyer bans, where experts spoke on state and federal legislation and potential challenges.

The REALTOR® Party also has [Issues Mobilization Grants](#) available that can be used by associations to support advocacy campaigns on this issue.

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Questions? Contact [Drew Myers](#).