

BUYING U.S. REAL ESTATE

Under Texas law, non-citizens have the same rights as U.S. citizens to purchase and invest in real estate. Foreign businesses can file papers with the Texas Secretary of State to qualify to do business in Texas and have the same rights and privileges as Texas corporations, including the power to buy and sell real estate.

The U.S. government does not even require reporting for some types of real estate purchases. These include the purchase of residential real estate, even if purchased by a corporation for the use of its owners. A U.S. business with no more than 200 acres of land and assets of no more than US\$1 million can also be purchased either directly or by merger into a foreign-owned U.S. business without reporting this to the U.S. government. In addition, limited partners, who receive income but do not participate in management, may invest in limited partnerships owning U.S. real estate without reporting their ownership to the U.S. government. These exceptions all fall under the International Investment and Trade in Services Act.

Other purchases of real property, and the people assisting in the purchases, must be reported, but none of the forms is available to a foreign country or for public inspection. In addition, only the country of the holder of the ultimate beneficial interest in the property must be reported: the name and address of the purchaser does not appear on these forms.

Agricultural land is an exception. Agricultural land includes land which produced crops or timber within the past five years, even if it is now used or will be used for something else. Under the Agricultural Foreign Investment Disclosure Act, ownership of even 10% by any foreign person or foreign-controlled entity (such as a U.S. subsidiary of a foreign corporation) must be reported to the U.S. government. This report must include the purchasers' names, addresses and the purchase price, even if the ultimate purchasers are shareholders in a foreign holding company.

Sellers of U.S. real property to foreign purchasers must withhold U.S. tax under the Foreign Investment in Real Property Tax Act to ensure that the tax is paid.

While purchasing and developing U.S. real estate can be complex, involving zoning, permitting and environmental considerations as well as land laws, it is unrestricted. In 2005, 40% of real estate transactions worldwide involved a foreign buyer or seller. It is easy to understand why many of these occurred in the United States.