

STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

October 2, 2023

Opinion No. 23-10

Restrictions on Foreign Ownership of Tennessee Real Property Under Tenn. Code Ann. §§ 66-2-101 to 306 (2023 Tenn. Pub. Acts, ch. 369)

Question

Does 2023 Tenn. Pub. Acts, ch. 369 (codified at Tenn. Code Ann. §§ 66-2-101 to 306) prohibit foreign ownership of Tennessee real property, and if so, what is the scope of the prohibition?

Opinion

Public Chapter 369 (codified at Tenn. Code Ann. §§ 66-2-101 to 306) is not a blanket prohibition of foreign ownership of Tennessee real property. It does, however, prohibit the purchase or other acquisition of Tennessee real property by “sanctioned foreign businesses,” “sanctioned foreign governments,” and “sanctioned nonresident aliens”—including any of their agents, trustees, and fiduciaries—as those terms are defined in the statute.

ANALYSIS

Before the enactment of 2023 Tenn. Pub. Acts, ch. 369, an “alien resident, or nonresident of the United States” was permitted to “take and hold property, real or personal, in this state and dispose of or transmit the same as a native citizen.” Tenn. Code Ann. § 66-2-101. But effective July 1, 2023, 2023 Public Chapter 369 amended that law to impose certain restrictions on foreign ownership of Tennessee property. Tenn. Code Ann. §§ 66-2-101 to 306 (2023).

The law as now amended generally prohibits the purchase or acquisition of Tennessee real and personal property by (1) “sanctioned foreign businesses,” (2) “sanctioned foreign governments,” and (3) “sanctioned nonresident aliens,” including any of their “agents, trustees, or fiduciaries” (referred to herein collectively as “regulated persons or entities”) as those terms are defined by statute. Tenn. Code Ann. § 66-2-302(a)(1).

Thus, whether Public Chapter 369 prohibits any particular foreign business, foreign government, or nonresident alien from buying or otherwise acquiring any particular Tennessee real property will depend on whether the property, person, or entity is regulated under the amended statute—i.e., comes within the relevant statutory definitions, which are as follows:

Real property “means one . . . or more defined parcels or tracks of land or interests, benefits, and rights inherent in the ownership of real estate, including easements, water rights, agricultural land, or any other interest in real property.” *Id.* § 66-2-301(1).

Sanctioned foreign business is (1) a corporation incorporated under the laws of a foreign country of a “sanctioned foreign government,” *id.* § 66-2-301(2)(A); (2) a “business entity whether or not incorporated, in which a majority interest” is “owned”¹ by “sanctioned nonresident aliens,” *id.* § 66-2-301(2)(B); or (3) “a corporation or business entity, whether or not incorporated, that is identified on the” Sanctions Programs and Country Information List” of the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury,² *id.* § 66-2-301(2)(C).

Sanctioned foreign government is “a government other than the government of the United States, its states, its territories, or its possession, that is identified by” OFAC’s Sanctions Programs and Country Information List. *Id.* § 66-2-301(3).

Sanctioned nonresident alien includes (1) “a citizen of a sanctioned foreign government” and (2) a person identified on OFAC’s Sanctions Programs and Country Information List. *Id.* § 66-2-301(4)(A). It does *not* include a citizen of the United States or “a person lawfully admitted into the United States for permanent residence by the United States immigration and naturalization service, even if such status is conditional.” *Id.* § 66-2-301(4)(B).

A regulated person or entity that held Tennessee real property before July 1, 2023, is grandfathered in and may continue to own or hold that particular property but may not buy or otherwise acquire additional real property after July 1, 2023. *Id.* § 66-2-302(c). Nor may a regulated person or entity transfer title or interest in that real property to another regulated person or entity, except by devise or descent. *Id.* § 66-2-302(d).

The restriction on ownership by a regulated person or entity does not apply to real property acquired through inheritance—i.e., by devise or descent. *Id.* § 66-2-302(b)(1). But if a regulated person or entity acquires Tennessee real property by devise or descent *after July 1, 2023*, that person or entity must “divest itself of all right, title, and interest in the real property within two . . . years from the date of acquiring the real property or interest.” *Id.* § 66-2-303(a). Divestment is not required, however, if the property is acquired from a sanctioned nonresident alien by devise or descent as long as the nonresident alien had acquired the property before July 1, 2023. *Id.* § 66-2-303(b).

Nor does the restriction on the purchase or other acquisition of real property by a regulated person or entity apply to “bona fide encumbrance[s] on real property taken for purposes of security.” *Id.* § 66-2-302(b)(2). And the restriction similarly does not apply to real property that is acquired by law “in the collection of debts; by a deed in lieu of foreclosure; pursuant to a forfeiture of a contract for deed; or by a procedure for the enforcement of a lien or claim on the real property.” *Id.* § 66-2-302(b)(3). But real property that is acquired by a regulated person or entity pursuant to this exception must be sold or otherwise disposed of within two years after the

¹ Ownership in this context refers to a sanctioned *nonresident alien*’s direct or indirect ownership interests, not the ownership interests of a legal entity or other business arrangement. *Id.* § 66-2-301(2)(B).

² The OFAC administers a number of different sanctions programs and maintains a list of countries subject to those programs. The List is available on OFAC’s official website. One particular sanctions program, the “Specially Designated Nationals and Blocked Persons List,” is also relevant in determining whether a particular individual or business is sanctioned. *See* Tenn. Code Ann. § 66-2-301(2)(C), (4)(A).

title is transferred. *Id.* And pending sale or disposition, the regulated person or entity may only use the property as it “was used . . . immediately prior to the time the property was put up for sale” and only by “lease to an individual, trust, corporation, partnership, or other business entity not subject to the” statute. *Id.*

If a person or entity that is not regulated by the statute—i.e., that is not within the definition of “sanctioned” person or entity—buys or otherwise acquires real property in Tennessee except by devise or descent after July 1, 2023, and then later “becomes a sanctioned nonresident alien, sanctioned foreign business, or sanctioned foreign government, or an agent, trustee, or fiduciary thereof” that person or entity must “divest itself of all right, title, and interest in the real property within” two years from the date of the change in status to regulated person or entity. *Id.* § 66-2-304.

Any regulated person or entity that holds or acquires an interest in Tennessee real property on or after July 1, 2023, must register that property with the Tennessee Secretary of State within the time and in the manner prescribed by statute. *Id.* § 66-2-305. If a regulated person violates the registration requirement, the Secretary of State “shall assess a civil penalty not to exceed” \$2,000 per violation. *Id.* § 66-2-306(e).

If the Secretary of State finds that a regulated person or entity has acquired or holds property in violation of the statute, the Secretary of State is required to report the violation to the Attorney General. *Id.* § 66-2-306(a). The Attorney General then “shall initiate” a circuit court action in the county in which the property is located and “shall file” a notice of the pendency of the action with the recorder of deeds in the county where the property is located. *Id.* § 66-2-306(b), (c). If the court finds a violation, it “shall declare the real property escheated to the state and order the sale of the real property in the manner provided by law for the foreclosure of a mortgage on real estate for default of payment.” *Id.* § 66-2-306(d). The statute expressly does *not* impose liability for a violation on real estate agents, attorneys, or title insurance agents involved in the transactions in which a regulated person or entity acquired an interest in Tennessee real property in violation of the statute. *Id.* § 66-2-306(f).

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