

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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OKLAHOMA
Real Estate Commission

SENATE BILL 212 YOUR QUESTIONS ANSWERED

What does Senate Bill 212 require?

SB 212 requires any deed that is recorded with the county clerk to include an affidavit as an exhibit that is executed by the person, entity, or trust coming into title attesting that the person, entity, or trust is taking title in compliance with state laws on foreign ownership of property.

Who is responsible for the Affidavit being signed by a Buyer?

The Buyer is ultimately responsible for executing the Affidavit for the County Clerk to record their deed. Title companies will provide the Affidavit at closing for execution. Real Estate Licensees should reasonably inform Buyers early in the process that an Affidavit will be required to close. Real Estate Licensees should communicate with clients and the title company to ensure this Affidavit is executed at or before closing of the transaction. The Oklahoma Real Estate Commission suggests that real estate licensees provide this affidavit to buyers early in the process to make sure the consumer is well-informed and has the opportunity to ask questions or seek further information/advice early in the process.

Who is responsible for verifying citizenship status?

Real Estate Licensees are NOT responsible for verifying citizenship status. A real estate licensee's only responsibility for SB 212 purposes is to inform clients of this requirement and help make sure the form is made available to them for signature at or prior to closing of the transaction.



OKLAHOMA
Real Estate Commission

SENATE BILL 212 YOUR QUESTIONS ANSWERED

What does the Affidavit say?

- 18+ years old;
- Either a U.S. Citizen or an alien who is or *may become a bona fide resident of Oklahoma*
- Acknowledge the law on foreign ownership of property;
- Acknowledge compliance with general ban on using prohibited funding sources under 60 O.S. Section 121 or any other state or federal law

What persons or entities are able to purchase property moving forward?

- U.S. Citizens;
- Native Americans born in the United States;
- Aliens or persons who are NOT citizens of the U.S. who are or *may become bona fide residents* of Oklahoma
- Business Entities or Trusts who are similarly attesting that they are either U.S. citizens or NOT U.S. citizens but may become bona fide residents of Oklahoma.

What is a bona fide resident?

There is no set definition of a bona fide resident in Oklahoma. A bona fide resident is equated with a person's honest, good faith intent to make a place one's residence or domicile. A person is **NOT** required to be a resident of Oklahoma at the time of closing on a real estate transaction to be eligible to purchase property. The State Constitution allows persons who *may become* bona fide residents to purchase property. Business entities formed in other states or countries should follow domestication procedures by registering their business entity with the Oklahoma Secretary of State. The Oklahoma Supreme Court ruled that a corporation formed by an alien and "domesticated" in Oklahoma by registering with the Secretary of State was determined to be a "bona fide resident". State ex rel. Cartwright v. Hillcrest Investments, Ltd., 1981 OK 27, 630 P.2d 1263 (1981).



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

Does this law change who is eligible to purchase property in Oklahoma?

No, this law does not change purchaser eligibility. If a person, entity, or trust was able to purchase property before this law went into effect, they may still purchase property now. SB 212 simply adds the procedural requirement that a person, entity, or trust coming into title must execute an affidavit to enable the county clerk to file a deed.

What types of real estate transactions require an affidavit now?

Any real estate transaction where a deed is recorded with a county clerk. This also applies to minerals because the definition of “land” under the law includes soil, rock, other substance and pore space (including oil or gas) (60 *Okla. Stat.* § 6).

What happens if a person, entity or trust refuses to execute an affidavit?

The county clerk will NOT record a deed without such affidavit.

The Affidavit says deed, but what about final decrees or affidavits of death and heirship? Will you have to get every heir/devisee to sign one before you can file the final decree? If an interest is acquired through succession via probate or affidavit of death and heirship, will the affidavit be required?

It is not required that every heir/devisee sign an affidavit before the final decree can be filed. This law change only applies to recording a deed. That said, every grantee in a transaction where a deed is to be recorded will have to include the affidavit as an exhibit to the deed.



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

When a Business Entity or Trust purchases property, who should sign this affidavit required by SB 212?

The Affidavit provides a fill-in-the-blank space for a duly authorized individual to execute the affidavit on behalf of the entity or trust. Examples include the trustee of a trust, officer of a business entity, and manager of an LLC. Consult a legal professional if you are unsure who may properly sign on behalf of an entity or trust.

Will this law impact investors who are abroad purchasing residential real estate in Oklahoma?

Investors who are bona fide residents or “may or shall become bona fide residents” are **NOT** prohibited from purchasing property under this law. Article 22 Section 1 of the OK Constitution provides that the prohibition on purchasing real property/land does NOT apply to (1) Native Americans born within the United States nor (2) aliens or persons who are NOT citizens of the U.S. who may become bona fide residents of the State.

Is there going to be a document for licensees to have Buyers sign when submitting an offer?

The Buyer(s) just need to sign the OREC Sales Contract / Purchase Offer which will now include a new provision affirming the Buyer is either a U.S. Citizen, alien, or non-citizen of the U.S. capable of executing the affidavit at or prior to closing.



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

Would you suggest inclusion of an info sheet to transaction documents, or will the addition of a paragraph in the purchase contract cover proper explanation?

We suggest that real estate licensees go over this requirement with purchasers early in the process, and provide the Affidavit or the provision being added to the purchase contract. Additionally, OREC will provide real estate licensees with a one-page information sheet on this topic that licensees can provide to all Buyers to give them further information before they submit an offer.

Will we need to get this document from transaction desk, or just rely on the title company to take care of it?

Title companies will provide this document at closing, but the Oklahoma Real Estate Commission strongly encourages real estate licensees to discuss this topic with the Title company they will use before closing to ensure it will be provided. The form will also be available on OREC's contract forms page.

If the Buyer declines to sign the document, will this stop the closing process?

If a buyer declines to sign the document, they will NOT be able to record the deed with the county clerk. It is likely possible that a transaction can close without execution of the affidavit, but the deed will not be recorded by a county clerk without such affidavit.



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

Does the Affidavit require a Notary?

Yes.

Sheriff and County Tax Property Sales: The Buyers buying it at County auctions with no Title Company involved will have to fill out the Affidavit too, correct?

Yes, the county clerk will require an affidavit to be signed to record a deed.

Can you add this to the "Contract Information Booklet" provided by OREC?

Yes.

Will the Affidavits be available in Spanish or other languages?

No – the Attorney General is solely responsible for creating this Affidavit. Providing it in Spanish or other languages is not something included in the SB 212 requirements.

What liability do real estate licensees face with this new law?

Real estate licensees are not responsible for verifying citizenship status, eligibility or accuracy. Enforcement of this law (60 *Okla. Stat.* § 121) is not the responsibility of real estate licensees or the county clerk. The county clerk's role is limited to ensuring that an affidavit is included with all deeds recorded after 11/1/2023.



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

What happens if the original deed (filed in previous years) is only refiled to correct a legal description, name, or typo? Is it required to have an affidavit?

Unless the Attorney General's Office exempts a deed from having to be filed with an affidavit required by 60 *Okla. Stat.* § 121, any deed, including corrective deeds, must have the requisite affidavit included.

Where can I review the affidavits?

Individual Affidavit -

<https://oklahoma.gov/content/dam/ok/en/orec/documents/contracts-and-forms-page/Affidavit%20for%20Title%20or%20Ownership%20of%20Land%20-%20Individual.pdf>

Non-Exempt Business Entities/Trusts:

https://oklahoma.gov/content/dam/ok/en/orec/documents/contracts-and-forms-page/affidavit_for_title_or_ownership_of_land_-_non-exempt_business_or_trust.pdf

Exempt Business Entity or Trust:

https://oklahoma.gov/content/dam/ok/en/orec/documents/contracts-and-forms-page/affidavit_for_title_or_ownership_of_land_-_exempt_business_or_trust.pdf

An Act

ENROLLED SENATE
BILL NO. 212

By: Bullard, Burns, Stephens,
Jett, Hamilton, Woods, and
Bergstrom of the Senate

and

Humphrey, Boles, and
Wolfley of the House

An Act relating to property; amending 60 O.S. 2021, Section 121, which relates to alien ownership of land; prohibiting certain ownership of land through business entity or trust; providing exception for certain business entities; requiring inclusion of certain affidavit with recording of deed; directing Attorney General to promulgate certain affidavit forms; and providing an effective date.

SUBJECT: Alien ownership of land

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 60 O.S. 2021, Section 121, is amended to read as follows:

Section 121. A. No alien or any person who is not a citizen of the United States shall acquire title to or own land in ~~the State of Oklahoma~~ this state either directly or indirectly through a business entity or trust, except as hereinafter provided, but he or she shall have and enjoy in ~~the State of Oklahoma~~ this state such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien

belongs, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of ~~this act~~ Section 121 et seq. of this title or the Constitution of this state. Provided, however, the requirements of this subsection shall not apply to a business entity that is engaged in regulated interstate commerce in accordance with federal law.

B. On or after the effective date of this act, any deed recorded with a county clerk shall include as an exhibit to the deed an affidavit executed by the person or entity coming into title attesting that the person, business entity, or trust is obtaining the land in compliance with the requirements of this section and that no funding source is being used in the sale or transfer in violation of this section or any other state or federal law. A county clerk shall not accept and record any deed without an affidavit as required by this section. The Attorney General shall promulgate a separate affidavit form for individuals and for business entities or trusts to comply with the requirements of this section, with the exception of those deeds which the Attorney General deems necessary when promulgating the affidavit form.

SECTION 2. This act shall become effective November 1, 2023.

Passed the Senate the 19th day of May, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

5. I acknowledge and understand that section 121 generally prohibits an alien or person who is not a citizen of the United States from acquiring title to or owning land in the State of Oklahoma. I further acknowledge and understand that section 121 does not prohibit an alien who is or who shall become a bona fide resident of the State of Oklahoma from acquiring title to or owning land in the State of Oklahoma.

6. I acquired title to the Property in compliance with the requirements of 60 O.S. § 121 and no funding source was used in the sale or transfer of the Property in violation of section 121 or any other state or federal law.

7. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT

Date

The foregoing instrument was acknowledged before me this ____ day of _____, 20 ____,
by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

5. No funding source is being used in the sale or transfer of the Property in violation of section 121 or any other state or federal law.

6. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or subject me and/or the Entity to being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT, individually, and as authorized agent of the Entity

Date

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

6. I acknowledge and understand that making or causing to be made a false statement in this affidavit may subject me to criminal prosecution for perjury and/or subject me and/or the Entity to being liable for actual damages suffered or incurred by any person or other entity as a result or consequence of the making of or reliance upon such false statement.

FURTHER AFFIANT SAYETH NOT.

AFFIANT, individually and as authorized agent of the Entity

Date

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____