

FILING A NON-ALIEN AFFIDAVIT WITH EVERY “DEED” TO “LAND” UNDER SB212, EFFECTIVE NOVEMBER 1, 2023:

BASIC ISSUES

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BIOGRAPHY

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- Of-Counsel with Nash Cohenour & Giessmann, P.C., OKC
- Since 1979: surface and mineral title opinions, and quiet title suits
- Currently primarily serves as a consulting & testifying expert on title issues
- OBA TES Committee Chair for over 30 years
- Wrote text book and taught Oklahoma Land Titles law course at OCU law school for over 30 years
- Creator and editor for West's OK Real Property Forms Book, since 2000, and writes several chapters
- Presenting an annual OBA review of OK Real Property Statutes and Cases, for over 20 years
- Published and presented many papers on Oklahoma Real Property topics, including 24 Oklahoma Bar Journal Articles, see www.EppersonLaw.com

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I. WHAT CHANGED--SB212--EFFECTIVE NOV. 1, 2023?

- 60 O.S. §121 was amended effective Nov. 1, 2023 to change the procedure for barring non-resident aliens from owning “land” in Oklahoma
 - Instead of waiting for the OK AG or local DA’s to undertake escheating proceedings, now the county clerks prevent the filing of the offending deed

II. WHY CHANGED?

First: according to the Oklahoma Association of Realtors' FAQ on SB212:

“Summary:

Foreign land ownership has become a salient political issue across the nation for a variety of reasons. In Oklahoma, an increasing number of foreign actors have used loopholes, and taken advantage of the state's marijuana industry to engage in illegal, black market operations. The Oklahoma legislature passed SB212 in 2023 to provide a prosecutorial framework which law enforcement can use to regulate and punish these illegal, foreign actors.”

WHY CHANGED?

Second: More specifically, as shown by the language of the OK AG “Affidavit of Land or Mineral Ownership: Exempt Business or Trust”:

“For purposes of this affidavit, I acknowledge and understand that to be ‘engaged in regulated interstate commerce in accordance with federal law,’ means all the entity’s business activities in Oklahoma must be either: (a) expressly permitted by federal regulation or federal law, or (b) not prohibited by federal regulation or federal law. I further acknowledge and understand that an entity engaged in or supporting the cultivation of marijuana in Oklahoma is not ‘engaged in regulated interstate commerce in accordance with federal law.’ I have read the provisions of 60 O.S. §121 and this affidavit and certify that the entity is engaged in regulated interstate commerce in accordance with federal law.”

III. SB212 LANGUAGE

(60 O.S. §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.

III. SB212 LANGUAGE (cont'd)

(60 O.S. §121)

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.

IV. PRE-SB 212 ESCHEATING PROCEDURE?

Was there a procedure before SB212 to bar/escheat alien ownership of land (or real estate) in Oklahoma?

Yes, pursuant to:

OK Const., Art. 22, Section 1, and 60 O.S. §§121-127

[Also Note: OK Const., Art. 22, Section 2, Bars corporations from owning rural land for agricultural purposes]

A. CONSTITUTIONAL BAR

OK Const., Art. 22, Section. 1 provides:

§1 Aliens - Ownership of Land Prohibited - Disposal of Lands Required.

- *No alien or person who is **not** a citizen of the United States, shall acquire title to or own **land** in this state*
- *And the legislature shall enact laws whereby all persons not citizens of the United States, and their heirs, who may hereafter acquire **real estate***

CONSTITUTIONAL BAR...(cont'd)

- In this state by devise, descent, or **otherwise**, shall dispose of the same within five years upon condition of escheat or forfeiture to the state:
- Provided, this shall not apply to Indians born within the United States, nor to aliens or persons not citizens of the United States who may become bona fide residents of this state;
- And provided further, that this section shall not apply to **lands** now owned by aliens in this state.

B. STATUTORY BAR

60 O.S. §121 (Pre-SB 212) implemented this constitutional prohibition on owning land (but not personal property) and provided:

*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, except as hereinafter provided, **but he shall have and enjoy in the State of Oklahoma 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 of the constitution of this state.***

C. STATUTORY PROCEDURE (PRE- AND POST-SB212)

There were 6 other sections helping to implement this constitutional prohibition (Pre-SB212 and unaffected by SB212) - 60 O.S. §§122-127

OTHER STATUTORY PROVISIONS (SUMMARIZED)

(Section 122) - A resident alien can acquire and hold title to land, for so long as they continue to be a resident, but must dispose of such land within 5 years of ceasing to be a resident;

(Section 123) - Any non-resident alien acquiring land by devise, descent or by purchase, where such purchase is made under any legal proceeding foreclosing liens in favor of such alien, may hold the same for five (5) years from the date of so acquiring such title;

(Section 124) - Any alien holding title to land contrary to these statutes, can convey fee simple if done before escheat proceedings are begun;

STATUTORY DETAILS (SUMMARIZED) (cont'd)

(Section 125) - The Oklahoma Attorney General or the District Attorney for the county where the land is located shall undertake escheat proceedings, but must give 30-days notice before initiating such proceedings;

(Section 126) - If the owner is a minor or of unsound mind, extra steps are required during escheat proceedings; and

(Section 127) - Upon completion of the escheat proceedings, the land shall be sold with the proceeds held for the owner for one year before the funds are paid to the state school fund.

V. INTERIM HISTORY BETWEEN 1910 AND 2023

Parwal Inv. Co. v. State, 1918 OK 498

OK Const. Art. 22, Section 2, prohibited corporations from owning land in rural areas for farming

The court held that a statutory provision rendering a deed void, if given in violation of this prohibition, was unconstitutional, because the constitutional provision was not “self executing”, but required adoption of a legislative escheat procedure (¶¶5 and 11)

V. INTERIM HISTORY BETWEEN 1910 AND 2023...(cont'd)

State ex rel Short v. Benevolent Inv. & Relief Assn., 1924 OK 1043

OK Const. Art. 22, Section 2, prohibited corporations from owning land in rural areas for farming, and, in addition, the corporation's charter did not permit townsite sales

The court held if a corporation acquires land when it exists but such acquisition is ultra vires, it can validly convey good title to the land, if escheat proceedings have not begun

The court also confirmed “these sections [Art. 22, Sections 1 & 2] have been held by this court not to be self-executing” (Parwal)

V. INTERIM HISTORY BETWEEN 1910 AND 2023...(cont'd)

OK AG Opinion, 1979 OK AG 286

This AG Opinion held the following, in regard to OK Const. Art. 22, Section 1 (which was overturned by the Oklahoma Supreme Court in the subsequent Cartwright case):

“1. An alien may not directly or indirectly acquire title to or own land in the State of Oklahoma.”

“4. Title to land which has been conveyed in violation of Article XXII, Section 1 of the OK Const., and 60 O.S. 121 (1971), has escheated to the State of Oklahoma.”

V. INTERIM HISTORY BETWEEN 1910 AND 2023...(cont'd)

State ex rel Cartwright v. Hillcrest Investments, Ltd., 1981 OK 27

This case involved an attempt by the OK AG to allow an escheat proceeding as to Oklahoma land against a domesticated foreign (Canadian) corporation

The court expressly overturned the AG Opinion holdings (§26):

After examining the constitutional and statutory provisions dealing with the treatment of domesticated corporations, we conclude that a foreign corporation, once it has complied with the domestication procedures established under Oklahoma law, is, for the purposes of restrictions on alien land ownership, a resident of the state - and thus no longer subject to the restrictions of article 22, section 1, of the Oklahoma Constitution.

VI. MAJOR CHANGE THRU SB212

Instead of continuing to wait for the OK AG or local DA's to initiate the 30-day notice and escheat actions, SB212 created a new process by amending §121 to provide:

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...

VII. CONSTITUTIONAL INFIRMITIES

A. Non-self Executing

1. As held in Parwal and Benevolent the Const. prohibition on alien ownership is not “self executing”, but is enforced solely through an escheat process initiated (1) after such acquisition, and (2) after an advance 30-day notice period. During during such 30-day notice period, valid fee title can be conveyed to a (non-alien) third party.

2. The state is attempting through SB212 to make this non-alien ownership prohibition “self-executing” by barring filing of all “deeds” to a non-resident alien.

3. Such attempt violates the prior cases of Parwal and Benevolent, and, therefore, are unconstitutional.

4. Also, recording of a deed is not legally necessary to convey valid title between the parties (16 O.S. §§15 &16), therefore, such prohibition on filing is not actually effective.

VII. CONSTITUTIONAL INFIRMITIES...(cont'd)

B. Domesticated entities are exempt

1. The OK AG Opinion, 1979 OK AG 286, prohibited a domesticated foreign (Canadian) corporation from owning land in Oklahoma, by holding: “An alien may not directly or indirectly acquire title or own land in the State of Oklahoma.”

2. SB212 repeats this prohibition: “No alien...shall acquire title or own land in this state either directly or indirectly through a business entity or trust...”.

3. Such prohibition has already been held unconstitutional in Cartwright as to domesticated foreign corporations, which by implication makes all “domesticated” entities exempt.

VII. CONSTITUTIONAL INFIRMITIES...(cont'd)

C. All aliens -- whether resident or not -- can acquire Oklahoma land and hold it for 5-years

1. OK Const. Art. 22, Section 1 is not self-executing (as held in Parwal and Benevolent), and by its own terms allows all aliens to hold title for 5-years.
2. The constitutional language differs from both the SB212 language (§121) and its predecessor.
3. Art. 22, Section 1, calls for aliens to “dispose” of lands that they acquired by “devise, descent or otherwise”, while Section 123 only allows this 5-year holding period where the acquisition is by “devise, descent or by purchase, where such purchase is made under any legal proceeding foreclosing liens in favor of such alien...”.
4. Thus, under the Constitution an alien can acquire Oklahoma land, but must “dispose” of it in 5-years.

VII. CONSTITUTIONAL INFIRMITIES...(cont'd)

D. The ownership of an entity is a personal property interest and is not prohibited under Art. 22, Section 1, of the constitution

1. Art. 22, Section 1, only impacts “land” (or “real estate”), which by definition does not include personal property, such as corporate “shares” or LLC “units”. (60 O.S. Sections 4, 5 and 6; 18 O.S. Sections 1040 and 2032)

2. Even §121 (both pre- and post-SB212) grants to aliens the right to own personal property.

VIII. PROBLEMS WITH IMPLEMENTATION

A. General Issues

1. Basic Questions

- a. What is “land”*
- b. What is a “deed”*
- c. Who signs the affidavit*
- d. Who is an “alien” and is a “bona fide resident”*
- e. What is a “business entity or trust”
- f. Can an alien own land “directly or indirectly through a business entity or a trust”*
- g. Who is exempted by being a “business entity that is engaged in regulated interest is in accordance with federal law”.*
- h. Are there limits on mortgagees.*
- i. Does the affidavit have to be expressly referred to in the “deed” in order to be “include[d] as an exhibit to the deed”, or can it simply be affixed (stapled) to the deed
- j. Does an “exempt” person or other “exempt” entity have to file an affidavit to establish such exemption

k. What deeds has the OK AG independently selected as being “exempt”

[*Discussed Below]

2. Practical Questions

- a. Can a re-typed version of the affidavit be used
- b. Can a revised affidavit be used
 - Use a jurat
 - Change “Oklahoma” as venue to another state
- c. Does each owner or officer/trustee/manager have to sign a separate affidavit

3. Discussion of selected “Basic Questions”

What is “land”; does this term “land” include both surface and minerals?

The word “land” is used in both the Alien Constitutional provision and Alien Statutes **[Note that this discussion is only to challenge the AG’s definition of “land” as including “oil and gas”]**

“Land” is a subpart of Real Property, which is a subpart of Property (60 O.S. Sections 4, 5 and 6).

In response to a question from the Oklahoma Land Title Association, the AG (in FAQ #1) concluded:

Question: The statute says, “acquire title to or own land,” but the affidavit says, “land or minerals.” we want to confirm that the affidavit will also apply to mineral interests since they are real property interests is that correct?

Answer: yes, the definition of land in 60 O.S. §6 includes soil, rock other substance, and pore space (including oil or gas)

AUTHOR'S CONTRARY COMMENT:

- The type of property interest covered by Art. 22, Section 1, and in the statutes (60 O.S. §§121-127) is “land”, but, the AG expands this to “land and minerals”; the AG improperly expands on the statute by adding “and minerals”; also, contrary to the AG’s position, 60 O.S. §6 only covers “the solid material of the earth” including the “pore space”, but it currently (since 2011) expressly excludes the contents of the pore space; (1) which content would logically be non-“solid” materials such as fluids or gases, like oil and gas, and (2) which arguably now (since 2011) expressly excludes oil and gas (see the statutory language below).
- 60 O.S. §6 (currently) expressly states:
 - A. *Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance, and includes any pore space.*
 - B. *1. As used in this section, “pore space” means any interstitial space not occupied by soil or rock, within the soil material of the earth, and any cavity, hole, hollow or void space within the solid material of the earth.*

2. *As used in this section, pore space is real property and, until title to the pore space or rights, interests or estates in the pore space are separately transferred, pore space is property of the person or persons holding title to the land surface above it.*
 3. *Notwithstanding the ownership of the pore space, nothing in this section shall alter or be construed to alter the ownership of, or rights associated with the oil or gas, as those terms are defined in Section 86.1 of Title 52 of the Oklahoma Statutes, that may be within the pore space.*
- “Hard” (i.e., “solid”) minerals such as coal are probably covered by this definition of “land” and, therefore, are covered by these constitutional and statutory limits; but fluids and gases, such as oil and gas are arguably not covered.

The AG office, also relied upon 60 O.S. Section 64, which provides:

“The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it.” and upon a case interpreting such statute, Boswell v Arrowhead Homes, 1999 OK CIV APP 30, which, in reliance on 60 O.S. Sections 6 & 64, held in Para. 8: *“The word ‘land’ includes not only the surface, but also the minerals found below it.”* Boswell relies on Lewis v. Sac & Fox, 1994 OK 20, dealing with “grounds” not “land”.

AUTHOR’S CONTRARY COMMENT:

1. Once the minerals are severed from the fee (surface and minerals), they are clearly no longer part of a fee title, and, therefore, severed minerals are no longer part of the “land”.
2. After the Boswell (which is only persuasive) and Lewis decisions were issued the legislature amended 60 O.S. Section 6 to expressly exclude the content of the “pore space”, mentioning “oil and gas”. Any legislative amendment, after a court decision, “clarifies” and/or “amends” the law and any court interpretation.
3. An oil and gas lease, or assignment is personal property. Cate v. Archon, 1985 OK 15, FN1, 695 P.2d 1352, FN1

b. WHAT IS A “DEED”?

- “Deed” - No definition is provided in this statute (60 O.S. §121 et seq)
- See 16 O.S. Sec. 40 And 41, re: Warranty Deed and Quit Claim Deed
- While it may have been the intent of the constitution and the legislation is to prevent “title” to “land” (e.g., “Black Acre”) from being “acquired or owned” by an alien, by any type of conveyancing instrument (including judgments/decrees), a broad term was not used
- In response to a question from the OLTA, the AG in FAQ stated: *“It is not required that every heir/devisee sign an affidavit before the final decree [issued in a probate proceeding] can be filed....;it only applies to recording a deed.”* AG also excludes Transfer on Death Deeds.
- The DA for Muskogee County opined broadly, after defining what is a ‘deed’: *“No. Because a decree by a court of competent jurisdiction is not a ‘deed’ for the purposes of SB212, an accompanying land ownership affidavit is not required for the instrument to be recorded.”* (Nov. 22, 2023)

c. WHO SIGNS THE AFFIDAVIT?

There is no official guidance, except on the face of the OK AG Affidavit forms:

- Individual grantors sign for self (unclear if A.I.F. or guardian can sign)
- Business entities and trusts sign by “role, such as title officer or trustee”

Regarding entities and trusts, this probably means:

- Corporation and LLC signs by corporate officer, but the entity must be domestic or domesticated, and, must state all owners are citizens or resident aliens
- Partnership signs by general partner, and must state all owners are citizens or resident aliens
- Trust signs by all trustees, and must state all owners are citizens or resident aliens

d. WHO IS AN “ALIEN” AND WHO IS A “BONA FIDE RESIDENT”?

- Following Art. 22, Section 2, 60 O.S. §121 (SB212) provides:

No alien or any person who is not a citizen of the United States shall acquire title to or own land in this state either directly or indirectly through a business entity or trust... .

- Also, following Art. 22, Section 2, 60 O.S. §122 provides:

This article shall not apply to...any alien who is or shall take up bona fide residence in this state... .

- While this constitutional provision and the alien statutes fail to define a “bona fide resident”, Cartwright (discussed herein) makes it clear that a domesticated foreign corporation is not subject to the alien constitutional limitations.

f. CAN AN ALIEN OWN LAND “EITHER DIRECTLY OR INDIRECTLY THROUGH A BUSINESS ENTITY OR TRUST”?

This language (new with SB212) expands the bar to prevent non-resident aliens from owning land through ownership of an entity presumably owned by an alien; therefore the owner or officer/trustee of the entity must swear that all of the owners are U.S citizens or are resident aliens.

However, as noted herein, the Cartwright case arguably overrules and invalidates this “indirect” language; furthermore, as noted herein, ownership in entities and trust, such as corporate shares and LLC units are personal property, and are neither “land”, nor “real estate”. (60 O.S. Sections 4, 5 and 6)

g. WHO IS EXEMPT FROM THIS BAR BUT STILL MUST PROVIDE AN AFFIDAVIT?

Amended 60 O.S. §121 provides:

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.

The only guidance on this issue is found in the language of the “Business/Trust Exemption” affidavit promulgated by the OK AG which provides:

3. *...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.*

g. WHO IS EXEMPT FROM THIS BAR BUT STILL MUST PROVIDE AN AFFIDAVIT?...(cont'd)

4. *For purposes of this Affidavit, I acknowledge and understand that to be “engaged in regulated interstate commerce in accordance with federal law,” means all the Entity’s business activities in Oklahoma must be either: (a) expressly permitted by federal regulation or federal law, or (b) not prohibited by federal regulation or federal law. I further acknowledge and understand that an entity engaged in or supporting the cultivation of marijuana in Oklahoma is not “engaged in regulated interstate commerce in accordance with federal law.” I have read the provisions of 60 O.S. § 121 and this Affidavit and certify that the Entity is engaged in regulated interstate commerce in accordance with federal law.*

h. ARE THERE LIMITS ON MORTGAGEES?

Yes, financing to purchase land cannot be provided by individuals, or business entities and trusts who are barred from such ownership.

IX. FORM OF AG AFFIDAVIT

The AG has promulgated three affidavit forms:

- A. INDIVIDUAL
- B. NON-EXEMPT BUSINESS/TRUST
- C. BUSINESS/TRUST EXEMPT

A. INDIVIDUAL AFFIDAVIT

OAG 2024-1 – INDIVIDUAL

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: INDIVIDUAL

STATE OF _____)

ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____
(list legal name and any aliases)(the "Affiant"), who, having been first duly sworn, deposes and states as of the date of this Affidavit:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I have personal knowledge of the statements made herein.
3. I am:
 a citizen of the United States; or
 not a citizen of the United States, but an alien who is or shall become a bona fide resident of the State of Oklahoma.
4. I acquired title to the real property identified in the Deed to which this Affidavit is attached (the "Property").
5. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:
No alien or any person who is not a citizen of the United States shall acquire title to or own land in 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 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 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.
6. 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.
7. 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.
8. 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 subscribed and sworn to before me this ____ day of _____, 20____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

B. NON-EXEMPT BUSINESS/TRUST

OAG 2024-2 – NON-EXEMPT BUSINESS/TRUST

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: NON-EXEMPT BUSINESS OR TRUST

STATE OF _____)

ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____
(list legal name and any aliases)(the "Affiant"), who, having been first duly sworn, deposes and states:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I am a/an _____ (role, such as titled officer or trustee) of _____ (legal name, along with any trade or fictitious names, of business, trust, or other legal entity)(referred to herein as the "Entity"). I am duly authorized to record this Affidavit on behalf of the Entity, which is taking title to the real property identified in the Deed to which this Affidavit is attached (the "Property"), and to bind the Entity for the consequences of any false statements in this Affidavit.
3. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:
No alien or any person who is not a citizen of the United States shall acquire title to or own land in 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 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 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.
4. The Entity 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.
5. If the Entity is a trust, its grantee(s), trustees and all direct and contingent beneficiaries are United States citizens or bona fide residents of the State of Oklahoma. If the Entity is a business, its direct and indirect owner(s) is/are United States citizens(s) or bona fide residents of the State of Oklahoma.
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 subscribed and sworn to before me this _____ day of _____, 20____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

C. BUSINESS/TRUST EXEMPT

OAG 2024-3 – BUSINESS/TRUST EXEMPTION

Exhibit to Deed

AFFIDAVIT OF LAND OR MINERAL OWNERSHIP: EXEMPT BUSINESS OR TRUST

STATE OF _____)

) ss.

COUNTY OF _____)

TO: THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

Before me, the undersigned _____
(list legal name and any aliases)(the "Affiant"), who, having been first duly sworn, deposes and states as of the date of this Affidavit:

1. I am eighteen (18) years of age or older and have personal knowledge of the statements made herein.
2. I am a/an _____ (role, such as titled officer or trustee) of _____ (legal name, along with any trade or fictitious names, of business, trust, or other legal entity)(referred to herein as the "Entity"). I am duly authorized to record this Affidavit on behalf of the Entity, which took title to the real property identified in the Deed to which this Affidavit is attached (the "Property"), and to bind the Entity for the consequences of any false statements in this Affidavit.
3. This Affidavit is executed in accordance with and pursuant to 60 O.S. § 121, which provides in part as follows:
No alien or any person who is not a citizen of the United States shall acquire title to or own land in 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 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 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.
4. For purposes of this Affidavit, I acknowledge and understand that to be "engaged in regulated interstate commerce in accordance with federal law," means all the Entity's business activities in Oklahoma must be either: (a) expressly permitted by federal regulation or federal law, or (b) not prohibited by federal regulation or federal law. I further acknowledge and understand that an entity engaged in or supporting the cultivation of marijuana in Oklahoma is not "engaged in regulated interstate commerce in accordance with federal law." I have read the provisions of 60 O.S. § 121 and this Affidavit and certify that the Entity is engaged in regulated interstate commerce in accordance with federal law.
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 subscribed and sworn to before me this ____ day of _____, 20____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission Number: _____

X. COUNTY CLERK'S DIFFERING PRACTICES

- Must use printed AG Form and not a re-typed or modified version
- Requires Affidavits on (arguably) non-"deed" conveyances such as Probate Decrees, Divorce Decrees, and Affidavits Terminating Joint Tenancy, TODD, Contract for Deed
- Cannot attach Affidavit to "Certified" Decree because that alters it
- The Affidavit must be "included as an exhibit to the Deed"
- All Trustees must sign the Affidavit (if to Trustees and not Trust)
- Each Trustee must sign a separate Affidavit
- Each individual grantee (e.g., husband and wife) must sign a separate Affidavit
- Correction Deed requires new Affidavit
- LLC unit owners must sign Affidavit
- Governmental entities must sign Affidavit
- Grantees on TODD and Contract for Deed must sign Affidavit
- Sellers must sign Affidavit

XI. PERSONAL COMMENTS: FORM

- An Affidavit is a sworn statement of facts and requires a jurat to establish perjury, not the acknowledgment used on the OK AG Forms, which is to be used on conveyances and releases [This has been corrected]
- The individual Affidavit lacks a declaration that the affiant is at least 18 years old [This has been corrected]
- The form says “State of Oklahoma”; when it might be signed in another state [This has been corrected]

XII. OREC RESIDENTIAL CONTRACT

The Oklahoma real estate commission has revised their residential purchase contract to include this provision:

Buyer Affidavit compliance. Buyer represents that at the time of submission of this purchase offer and at the time of closing. buyer is either (a) a U.S. Citizen, Native American, or non-citizen/alien who is or shall become a bona fide resident of the State of Oklahoma, or (b) a business entity or trust in compliance with 60 O.S. §121 -122. Buyer further represents that buyer is eligible to execute the required Affidavit of land or mineral ownership provided by the Attorney General of the State of Oklahoma as required by 60 O.S. §121

XIII. FUTURE?

- The OK AG’S office has promised to provide a set of emergency regulations by the first part of 2024
- The county clerks are currently looking to their DA for guidance; however, all state and local officials must comply with formal AG Opinions or face civil liability
- Efforts are underway to propose clarifying legislation on all these issues to be adopted in 2024 [See proposed replacement below]
- In the interim, you should consider:
 - Communication with your local District Attorney and county clerk
 - Filing a “friendly” lawsuit (Declaratory Judgment and/or Mandamus) against your county clerk, if they improperly refuse to record your instrument

XIV. LEGISLATIVE AMENDMENT

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1705

By: Howard

AS INTRODUCED

An Act relating to alien ownership of land; amending 60 O.S. 2021, Section 121, as amended by Section 1, Chapter 327, O.S.L. 2023 (60 O.S. Supp. 2023, Section 121), which relates to prohibition of alien ownership of land; defining terms; adding entities prohibited from certain ownership; updating statutory reference; adding persons authorized to execute certain affidavits; requiring notarization of certain document; providing exemptions to certain requirements; requiring inclusion of specific exemption on recorded deed; authorizing Attorney General to establish additional exemptions; allowing substantial compliance to certain form requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 2021, Section 121, as amended by Section 1, Chapter 327, O.S.L. 2023 (60 O.S. Supp. 2023, Section 121), is amended to read as follows:

Section 121. A. As used in Chapter 3 of this title:

1. "Deed" means any instrument in writing whereby land is assigned, transferred, or otherwise conveyed to, or vested in, the person coming into title or, at his or her direction, any other person;

1 2. "Foreign government" means a government other than the
2 federal government of the United States, the government of any
3 state, political subdivision of the state, tribe, territory, or
4 possession of the United States;

5 3. "Foreign government enterprise" means a business entity,
6 sovereign wealth fund, or state-backed investment fund in which a
7 foreign government holds a controlling interest; and

8 4. "Land" means the same as defined in Section 6 of this title.

9 B. No alien, foreign government, or any person who is not a
10 citizen of the United States shall acquire title to or own land in
11 this state either directly or indirectly through a business entity,
12 trust, or foreign government enterprise, except as hereinafter
13 provided, but ~~he or she~~ they shall have and enjoy in this state such
14 rights as to personal property as are, or shall be accorded a
15 citizen of the United States under the laws of the nation to which
16 such alien belongs, or by the treaties of such nation with the
17 United States, except as the same may be affected by the provisions
18 of Section 121 et seq. of this title or the Constitution of this
19 state. Provided, however, the requirements of this subsection shall
20 not apply to a business entity that is engaged in regulated
21 interstate commerce in accordance with federal law.

22 B. C. On or after ~~the effective date of this act~~ November 1,
23 2023, any deed recorded with a county clerk shall include as an
24 exhibit to the deed an affidavit executed by the person, the

1 person's attorney-in-fact, a court-appointed guardian or personal
2 representative, an authorized officer of the entity, or trustee
3 of the trust coming into title attesting that the person, business
4 entity, or trust is obtaining the land in compliance with the
5 requirements of this section and that no funding source is being
6 used in the sale or transfer in violation of this section or any
7 other state or federal law. A county clerk shall not accept and
8 record any deed without an affidavit as required by this section
9 which is duly notarized pursuant to Title 49 of the Oklahoma
10 Statutes. The requirements of this subsection shall not apply to a:

11 1. Deed which, without additional consideration, confirms,
12 corrects, modifies, or supplements a deed previously recorded;

13 2. Deed made by a grantor to cure a defect in title or
14 effectuate a disclaimer of interest in real property;

15 3. Transfer-on-death deed made by a grantor designating a
16 grantee beneficiary pursuant to the Nontestamentary Transfer of
17 Property Act, Section 1251 et seq. of Title 58 of the Oklahoma
18 Statutes;

19 4. State or federal court order in an action to quiet title or
20 to cure a defect in title;

21 5. State or federal court order or decree in probate,
22 partition, quiet title, and divorce actions for which there is no
23 additional consideration paid;

1 6. Deed which secures a debt or other obligation, or which
2 releases such property as security for a debt or other obligation;

3 7. Deed of dedication to the public; or

4 8. Deed in favor of the United States or any of its political
5 subdivisions, a state or any of its political subdivisions, or a
6 tribe.

7 The applicable exemption shall be shown on the face of the deed
8 prior to the recording of the deed.

9 D. The Attorney General shall promulgate a separate affidavit
10 form for individuals and for business entities or trusts to comply
11 with the requirements of this section, with the exception of those
12 deeds. The Attorney General may provide additional exemptions and
13 allow reasonable alterations to the affidavit forms which the
14 Attorney General deems necessary when promulgating the affidavit
15 form to substantially comply with the requirements of this section.

16 SECTION 2. This act shall become effective November 1, 2024.

17
18 59-2-2694 TEK 1/16/2024 4:51:34 PM

XV. CONCLUSION

- Be Conservative
- Ask Your County Clerk and DA For Their Policies
- Push For Legislative Clarification
- File a “Friendly” Lawsuit Against the County Clerk for Declaratory Judgment and/or Mandamus

XVI. SB212 -- OK NON-ALIEN AFFIDAVIT RESOURCES

By Kraettli Q. Epperson

(last revised 1-24-24)

kqe@nashfirm.com

405-917-5000

- A. POWER POINT -- BARRING ALIEN OWNERSHIP -- BASIC ISSUES
(355PP - 51 slides) (revised 1-17-24)
- B. OK CONST., ART. 22, SECTION 1
- C. SB212 -- NON-ALIEN AFFIDAVIT (Nov. 1, 2023)
- D. AG AFFIDAVIT FORMS
 - 1. INDIVIDUAL
 - 2. NON-EXEMPT ENTITY
 - 3. EXEMPT ENTITY
- E. FAQ
 - 1. AG
 - 2. OLTA
 - 3. OREC
 - 4. OAR
- F. ALIEN OWNERSHIP OF LAND STATUTES (60 O.S. Sections 121 et seq)
 - 1. 60 O.S. SECTION 121 (NEW -- POST-NOV. 1, 2023)
 - 2. 60 O.S. SECTION 121 (OLD -- PRE-NOV. 1, 2023)
 - 3. 60 O.S. SECTION 122
 - 4. 60 O.S. SECTION 123
 - 5. 60 O.S. SECTION 124
 - 6. 60 O.S. SECTION 125

XVI. SB212 -- OK NON-ALIEN AFFIDAVIT RESOURCES...cont'd

7. 60 O.S. SECTION 126

8. 60 O.S. SECTION 127

G. BACKGROUND CASES AND AG OPINIONS

1. PARWAL INV. CO. v. STATE, 1918 OK 498--OK CONST., ART. 22, SECTION 2 -- ESCHEATING IS NOT SELF-EXECUTING

2. STATE ex rel. SHORT v. BENEVOLENT INV. & RELIEF ASS'N, 1924 OK 1043--CONVEYANCE TO CORPORATION ULTRA VIRES STILL VALID FOR RECONVEYANCE

3. OK AG 76-253

4. OK AG 79-286

5. STATE ex rel. CARTWRIGHT v. HILLCREST INVESTMENTS, LTD., 1981 OK 27--DOMESTICATED FOREIGN CORPORATION CAN HOLD TITLE TO LAND

H. OTHER MATERIALS

1. AG MEMO REGARDING GOVERNMENT ENTITY EXEMPT AS GRANTEE

2. MUSKOGEE COUNTY DA OPINION ON JUDGMENTS/DECREES ARE NOT "DEEDS" (11-22-23)

3. AG EMAIL PROVIDING AFFIDAVIT NOT NEEDED FOR TODD (11-30-23)

4. AG EMAIL ALLOWING CHANGES TO FORM, TO USE OF AIF AND GUARDIAN (12-6-23)

5. STEVEN L. BARGHOLS, *ALIEN OWNERSHIP OF OKLAHOMA URBAN REAL PROPERTY*, OKLA B.J. 2439 (1979)

6. MICHAEL KUZOW, *CORPORATE ALIENS AND OKLAHOMA'S ALIEN LANDOWNERSHIP RESTRICTIONS*, 16 TULSA L.J. 528 (2013) (PRESENTED AT THE SPRING 1981 ENERGY SYMPOSIUM)

7. JENNIFER SCOTT MORARDI, *ALIEN OWNERSHIP OF LAND IN OKLAHOMA*, 79 OKLA. 233 (2008)

8. 2024 OKLAHOMA PROPOSED AMENDMENT TO SB212 (SEN. HOWARD -- SB7075)