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Jennifer Scott Moradi, Alien Ownership of Land in Oklahoma, 79 OKLA. B.J. 233 (2008).

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APA 7th ed.

Moradi, J. (2008). Alien ownership of land in oklahoma. Oklahoma Bar Journal, 79(4), 233-239.

Chicago 17th ed.

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Moradi, Jennifer Scott. "Alien Ownership of Land in Oklahoma." Oklahoma Bar Journal, vol. 79, no. 4, February 9, 2008, pp. 233-239. HeinOnline.

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Alien Ownership of Land in Oklahoma

By Jennifer Scott Moradi

At first glance, the subject of alien land ownership would not appear to be a topic ripe for discussion. After all, the basic concept of such ownership has been part of Oklahoma's Constitution since the Constitutional Convention in 1907 and part of the Oklahoma Statutes since the 1907-08 edition, with very little revision since that time.

Further, the last (and only) major case addressing the topic was decided by the Oklahoma Supreme Court in 1981. However, despite the rather static development of the laws on this subject, the question of whether aliens may own land in Oklahoma remains a murky and complicated issue for many practitioners. This article seeks to clear up some of that confusion and provide practitioners with some background regarding Oklahoma's laws concerning alien land ownership.

OKLAHOMA CONSTITUTION AND STATUTES

The Oklahoma Constitution and the Oklahoma Statutes define the term "alien" as "any person who is not a citizen of the United States."¹ Section 1 of Article XXII of the Oklahoma Constitution states generally that "[n]o alien or person who is not a citizen of the United States, shall acquire title to or own land in this state" with exceptions for "Indians born within the United States," persons "who may become bona fide residents of" the State of Oklahoma, and "lands now owned by aliens in this State."

Pursuant to a constitutional directive contained in Section 1 of Article XXII, Oklahoma also enacted several statutes on the subject of alien land ownership. These statutes, located at

60 Okla. Stat. §§121-127, also prohibit, subject to certain enumerated exceptions, aliens from owning or holding title to real property in Oklahoma, under penalty of escheat of such lands to the state. These exceptions include: 1) those aliens who owned their lands in 1910, so long as they are held by the 1910 owners;² 2) those aliens who are or shall become "bona fide" residents of the state of Oklahoma, provided that if any of those aliens cease to be "bona fide" residents at any time, they shall have five years from the date they ceased to be bona fide residents to transfer such lands;³ and 3) those nonresident aliens who acquire land by devise, descent or purchase at a lien foreclosure sale, who are also allowed five years in which to transfer the lands.⁴

If an alien does not meet any of the exceptions listed above, the alien may not own land in Oklahoma. In the event it is discovered that a nonresident alien not meeting any of the constitutional or statutory exceptions owns real property in Oklahoma, either the Oklahoma attorney general or the district attorney of the county in which the lands are located must bring suit on behalf of the state of Oklahoma asking that the real property be escheated to the state.⁵ However, prior to the institution of the suit, the attorney general or district attorney, as applicable, must provide either the

owner of the lands, the owner's agent or the persons who last paid the taxes on the lands with 30 days' written notice of his or her intention to sue, and such notice must be sent by registered letter to the person's last known post office address.⁶

In the event that the nonresident alien land owner is under a legal disability by virtue of being a minor or a person of unsound mind, the attorney general or district attorney's notice shall be addressed to the guardian of the owner.⁷ If no guardian exists for the owner, the attorney general or district attorney must make application to the court and obtain a guardian ad litem for the property owner.⁸ After the guardian has been appointed, the district attorney shall direct the court clerk to locate the residence or post office address of the property owner's next of kin and to send a copy of the petition to escheat the land to the next of kin.⁹ After mailing of the petition to the owner's next of kin, the owner shall have 90 days to appear and defend the lawsuit.¹⁰

If at trial the court finds that the lands are held by a nonresident alien in violation of the Oklahoma Constitution and the Oklahoma Statutes, then the court shall enter judgment in favor of the state, providing for the condemnation of the lands and ordering that the lands be sold upon the terms and conditions determined by the court.¹¹ After confirmation of the sale of the land, the proceeds of the sale, less the costs of the lawsuit, are paid to the court

both before the landowner is divested of his or her title to the land and after the sale of the land. Prior to the institution of escheat proceedings, any alien who holds land in violation of Oklahoma law is permitted to convey fee simple title to any person eligible to hold land in the state of Oklahoma at any time.¹⁴ Further, after the sale proceeds have been paid into the state treasury, the former alien landowner or his heirs may obtain a return of the funds by applying for and receiving an order from the court "showing that such judgment escheating said property was procured by fraud, or mistake, or that there was material irregularity in the proceedings."¹⁵ However, the application to recover the funds must be made within two years from the date the money was turned over to the state treasury.¹⁶



66 **Several procedural safeguards are provided to nonresident alien landowners in the Oklahoma Constitution and the Oklahoma Statutes...** 99

clerk to be held for one year from the date of the payment, subject to any claim or further order of the alien owner.¹² If the sale proceeds are not claimed within the year in which they are held by the court clerk, the funds shall be paid into the state treasury to be placed in the school fund.¹³

Several procedural safeguards are provided to nonresident alien landowners in the Oklahoma Constitution and the Oklahoma Statutes,

Finally, it is important to note that only one situation will cause an automatic forfeiture of land. If the nonresident alien landowner exercises his or her right to convey title prior to the institution of the escheat proceedings, and the conveyance is made to either another alien or to a citizen in trust for the

alien "and for the purpose and with the intention of evading the provisions" of Oklahoma law, the conveyance is null and void.¹⁷ Further, the land so conveyed "shall be forfeited and escheated to the state absolutely."¹⁸

INTERPRETATION OF OKLAHOMA LAW REGARDING ALIEN LAND OWNERSHIP

The constitutional and statutory provisions concerning alien land ownership remained

largely free from interpretation until the 1970s. However, during that decade, the "growth of the foreign investors market and the influx of alien students into the state" created a necessity for interpretation of Oklahoma's laws regarding alien ownership of land.¹⁹ In 1975 and 1976, the attorney general of Oklahoma issued two advisory opinions on the subject.²⁰ Then, early in 1979, the Oklahoma state Senate asked the attorney general to investigate the extent of foreign land investment in the state and to compile a report on his findings.²¹ To aid the attorney general in his investigation, on Jan. 30, 1979, the Oklahoma state Senate adopted Senate Resolution No. 11 which, among other things, "call[ed] upon every citizen with knowledge of nonresident alien land purchases to report to their local District Attorney and to the Attorney General."²² The Attorney general issued his report on May 1, 1979, which included a list of corporations suspected of violating Oklahoma's alien land ownership laws.²³

After submitting his report to the state Senate, the attorney general issued another advisory opinion on the subject of alien ownership of land in Oklahoma. On Sept. 12, 1979, Opinion No. 79-286 provided: 1) that aliens may not directly or indirectly acquire title to or own land in Oklahoma; 2) that aliens who can be shown to have become bona fide residents of the state may acquire and hold property until they cease to be bona fide inhabitants, at which time they will have five years in which to alienate their lands; 3) that a nonresident alien may only hold land in Oklahoma if the land was acquired by descent, devise or by purchase at a sale foreclosing a lien in favor of the alien, which land can be held for only five years; 4) that title to land conveyed in violation of Oklahoma law has escheated to the state; and 5) that the term "person" includes bodies corporate, who do not avoid the prohibition by obtaining articles of domestication.²⁴

In furtherance of his duty under the Oklahoma Constitution and the Oklahoma Statutes, the attorney general next began to bring actions to enforce the law. On Nov. 14, 1979, the state served written notice on Hillcrest Investment Ltd., an Alberta, Canada, corporation, stating that the state believed that the company owned land in contravention of Oklahoma law.²⁵ Thereafter, the attorney general brought suit against Hillcrest.

In its answer to the state's petition, Hillcrest admitted that it owned certain land in Oklahoma, that it was a corporation formed under the laws of Alberta, Canada, and that it had filed Articles of Domestication with the Oklahoma Secretary of State and had received a Certificate of Authority to transact business in Oklahoma.²⁶ At trial, the court held that the restriction on alien ownership of land contained in the Oklahoma Constitution and the Oklahoma Statutes applied only to individuals and not to corporations.²⁷ The state appealed.

On appeal, the Oklahoma Supreme Court considered two issues: 1) whether the trial court erred in holding that Section 1 of Article XXII of the Oklahoma Constitution did not apply to corporations;²⁸ and 2) whether the corporation at issue is an alien corporation and whether the defendant corporation is a nonresident of the state of Oklahoma.²⁹

To answer the first issue, the court examined the intent of the drafters of the Oklahoma Constitution and whether the drafters understood the terms "alien" or "person" to include corporations within their definitions. The court concluded, based on the territorial statutes in effect at the time and relevant case law, that the drafters of the Oklahoma Constitution did intend for the prohibitions on alien ownership of land to apply to corporations.³⁰ The statutes of the territory "specifically define[d] 'person' to include corporations, and such was the law in Oklahoma Territory for quite some time prior to the Constitutional Convention. Thus, the term 'person' was, in law, understood to include corporations when the Constitutional Convention was convened."³¹ The court further held that "at the time the Constitution was adopted, existing case law construed the term 'alien' to include corporations, so that a corporation created by the laws of a foreign country was an alien."³²

After determining that the prohibitions on alien ownership of land contained in the Oklahoma Constitution apply to corporations, the court turned to an examination of the second issue in the case. The court "easily ascertained" the answer to the first inquiry because the defendant admitted that it was a corporation formed under the laws of Alberta, Canada.³³ The court stated, "[i]t is well settled that corporations formed under the laws of foreign nations are alien corporations."³⁴

The court next addressed the second inquiry, whether the defendant corporation is a resident or nonresident of the state of Oklahoma, which the court referred to as the "determinative question" in the case.³⁵ At the outset, the court recognized that there are "material differences" between corporations and natural persons, in that "under some circumstances and for some purposes," corporations may "be considered residents of more than one jurisdiction."³⁶ The court further noted that many jurisdictions support the view that "for certain purposes, a residence within a jurisdiction may be considered apart from the legal residence or domicile of a corporation, and that 'foreign corporation' and 'nonresident corporation' are not necessarily synonymous terms"³⁷ and that Oklahoma had "long ago embraced the rationale expressed by [its] sister jurisdictions."³⁸



After determining that foreign corporations may, in various circumstances, be considered residents of the state of Oklahoma, the court considered whether a foreign corporation may be a state resident for the purposes of property ownership. In making this determination, the court again turned to constitutional and statutory provisions of the drafters, this time in the context of the treatment of domesticated corporations. The court concluded 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."³⁹

In reaching this conclusion, the court cited the fact that the drafters of the Oklahoma Constitution provided that foreign corporations that become authorized to conduct business in the state of Oklahoma through the domestication process "are subject to the same restrictions and requirements as domestic corporations."⁴⁰ Therefore, the court concluded that the drafters "did not intend for domesticated corporations to be subject to the land ownership restrictions imposed upon aliens, but rather left such decision to the Legislature" and that "it was the intent of the drafters . . . that domesticated corporations be considered 'bona fide residents,'" as that term is used in Article 22, Section 1.⁴¹

The court further stated that the Legislature, rather than imposing the land ownership restrictions on alien corporations, instead provided that "foreign corporations, upon receiving a certificate of domestication, enjoy the same rights and privileges as domestic corporations."⁴² One of the rights and privileges of domestic corporations is the right to own property in the state; thus, the same right is afforded to domesticated corporations.⁴³

In short, the Supreme Court in *Hillcrest* held that, although nonresident

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alien individuals are prohibited from owning land in the state of Oklahoma, except in certain circumstances, foreign corporations are entitled to own land in the state, after the corporation becomes domesticated in the state. The court was careful to caution, however, that nothing in its holding "should be taken to mean that such rights would be afforded a sham corporation, set up by individual aliens solely to avoid the restrictions of Article XXII, Section 1, when such entities are not in fact operated as legiti-

mate corporations."⁴⁴ No further judicial determinations have been made regarding the application of the principles set forth in *Hillcrest*.

SUMMARY OF OKLAHOMA LAW WITH REGARD TO ALIENS AND ALIEN BUSINESS ENTITIES

Based upon the constitutional and statutory provisions regarding alien land ownership and the decision of the Oklahoma Supreme Court in *Hillcrest*, the following summarizes current Oklahoma law:

1) Aliens that are bona fide residents of Oklahoma (i.e., those that have established through intention and fact that Oklahoma is their primary residence) may own real property in Oklahoma, subject to the proviso that they must transfer title to the land within five years after they end their bona fide residence in Oklahoma.

2) Aliens that are not bona fide residents of Oklahoma cannot own property within the state, subject to the five-year safe harbors allowed in the event that an alien receives property through descent and devise or obtains title to the property through a foreclosure of a lien held by the alien.

3) Alien corporations, if domesticated in Oklahoma (that are not sham corporations formed for the sole purpose of owning land in Oklahoma), are allowed to own property in Oklahoma, subject to the limitations placed on corporate ownership of real property located outside of "incorporated cities and towns" as set forth in Section 2 of Article XXII of the Oklahoma Constitution and in 18 Okla. Stat. §1020 and on corporate ownership of farmland as set forth in 18 Okla. Stat. §955.

4) As for other types of alien business entities for which Oklahoma law provides domestication procedures (e.g., limited liability companies, limited partnerships and limited liability partnerships), it seems likely that a court would uphold the right of such entities to own land in Oklahoma based upon the reasoning set forth in *Hillcrest*.⁴⁵ However, since there has been no judicial determination regarding these entities, it is of course safest to use an alien corporation instead.

1. Okla. Const. art. XXII, §1; 60 Okla. Stat. §121.
2. 60 Okla. Stat. §122.
3. *Id.*
4. 60 Okla. Stat. §123.
5. 60 Okla. Stat. §125.

6. *Id.*
7. 60 Okla. Stat. §126.
8. *Id.*
9. *Id.*
10. *Id.*
11. 60 Okla. Stat. §127.
12. *Id.*
13. *Id.*
14. 60 Okla. Stat. §124.
15. 60 Okla. Stat. §127.
16. *Id.*
17. 60 Okla. Stat. §124.
18. *Id.*
19. See Douglas A. Echols, *Constitutional Law: Are Oklahoma's Restrictions on Alien Ownership of Land Constitutional?*, 32 Okla. L. Rev. 144 (1979).
20. Opinion Nos. 74-214 and 76-253.
21. *Recent Developments in Oklahoma Law – State Constitution*, 6 Okla. City. U.L. Rev. 589, 592 (1981) (hereinafter referred to as "Recent Developments").
22. Okla. S. Res. 11, 37th Cong., 1st Sess. §1 (1979); See also *Recent Developments*, at 592, n.19.
23. *Recent Developments*, at 592.
24. Opinion No. 79-286, 11 Op. Atty. Gen. 452 (1979). For an excellent discussion regarding Opinion No. 79-286, see Steven L. Barghols, *Alien Ownership of Oklahoma Urban Real Property*, 50 Okla. B.J. 2439 (1979).
25. *Recent Developments*, *supra* note 21, at 592.
26. *State ex rel. Cartwright v. Hillcrest Investments, Ltd.*, 630 P.2d 1253, 1255 (Okla. 1981).
27. *Id.*
28. *Id.*
29. *Id.* at 1258.
30. *Id.* at 1256.
31. *Id.*
32. *Id.* at 1257.
33. *Id.* at 1258.
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.* at 1259.
39. *Id.*
40. *Id.* at 1260.
41. *Id.*
42. *Id.* at 1261.
43. *Id.*
44. *Id.* at 1263.
45. These business entities, just like corporations, have been granted the right to hold property in the name of the entity, separate from the principals. See 18 Okla. Stat. §2003 (limited liability companies); 54 Okla. Stat. §§1-201, 307 (for limited partnerships and limited liability partnerships). When you take into account the fact that these business entities also have established domestication procedures (like corporations) it is difficult to imagine that a court would come to a result inconsistent with the decision in *Hillcrest*.

ABOUT THE AUTHOR



Jennifer Scott Moradi is legal counsel for Stewart Abstract & Title of Oklahoma. She received her B.A. and her J.D. from the University of Oklahoma. Until recently, she was an associate with Andrews Davis PC in Oklahoma City, where she practiced primarily in the area of commercial real estate. Ms. Moradi is currently serving as immediate past chairperson of the OBA Young Lawyers Division's Mock Trial Committee.

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She has also interpreted and translated for several Missouri courts and for the Bootheel Migrant Farmworker's Project. She recently served as the Assistant Director and CLE Programs Attorney at The Missouri Bar. Samantha practiced law for a number of years in Federal Bankruptcy Court in Missouri and Kansas.

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