



**OKLAHOMA LAND TITLE ASSOCIATION
GOVERNMENT AFFAIRS COMMITTEE**

**ALIEN OWNERSHIP OF LAND
FREQUENTLY ASKED QUESTIONS
60 Okla. Stat. §§121 and 122**

NOTE: We anticipate that the Attorney General will issue guidance in the form of Emergency Administrative Rules in the coming months. The following FAQs and responses do not represent official guidance on the matters covered herein and are merely intended to bridge the gap between our present understanding of SB212 and official guidance from the Attorney General's office.

1. What was the status of alien ownership of land in Oklahoma prior to SB212?

Generally, no person who is not a citizen of the United States may acquire title to or own land in the United States (under federal law) and in the state of Oklahoma (under Oklahoma law). In other words, a non U.S. citizen (an "alien") only has such rights to take and hold real property as is permitted by state and federal law. The right of an alien to own property in Oklahoma under certain conditions has existed since statehood and is provided for in the Oklahoma Constitution, Article XXII, Section 1:

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 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.

Similar language is found in 60 Okla. Stat. §§121-123 and is the subject of several Attorney General's Opinions.

2. What were the exceptions under which an alien may own property in Oklahoma prior to SB212.

There were three basic exceptions under Oklahoma law prior to SB212:

a. Native Americans born within the United States. All Native Americans are also U.S. Citizens by treaty.

b. Non-Citizens of the United States who are or may become bona fide residents of the state. In simple terms, the ability to hold property depends upon “intent” relative to “residency.” If an alien takes up bona fide residence in Oklahoma, they may acquire and hold lands during the continuance of such bona fide residency. However, if the alien moves from the state and is no longer considered a resident or intends to remain a resident, then the alien must dispose of their property within five years. If the alien fails to dispose of their property, the State can institute escheat proceedings. Another way to think about this concept is that an alien does not own title in fee simple absolute but holds subject to the conditions of the statute.

c. Alien corporates that domesticate within the 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). It appears that the same concept would apply to LLC’s and partnerships, but there is no case law or statute on point. Title companies should be aware that a business entity formed in another state or country that goes through the domestication procedures by registering their business entity with the Oklahoma Secretary of State should comply with the title insurer’s underwriting guidelines.

3. What did SB212 do to change the current status of the law?

The Oklahoma Legislature passed Senate Bill 212 during the 2023 legislative session to amend 60 Okla. Stat. §121 to require that any “deed” that is recorded with the county clerk must include an affidavit as an exhibit that is executed by the person, entity, or trust coming into title (“Buyer”) attesting that the person, entity, or trust is taking title in compliance with state laws on foreign ownership of property.

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.

4. When is SB212 effective?

SB212 is effective as of November 1, 2023. There is no phase-in period. EVERY deed presented for recording on November 1, 2023, or later must be accompanied by the required Affidavit. The statute is not retro-active.

5. Who creates the Affidavit?

The Attorney General is responsible for creating the Affidavit forms. The AG has created three Affidavit forms: (1) Individual, (2) “Non-Exempt” Business Entity, and (3) “Exempt” Entity. The forms are attached to this FAQ document. The forms can also be found on the AG’s website: <https://www.oag.ok.gov/public-forms>.

6. Who is responsible for the Affidavit to be signed by a Buyer?

The Buyer is ultimately responsible for executing the Affidavit in order for the county clerk to record their deed. Title companies should provide the Affidavit at closing for execution. OLTA recommends that real estate agents and attorneys communicate with their clients and provide the Affidavit to potential Buyers early in the process to make sure that the Buyer is informed of the new requirement and has the opportunity to ask questions or seek further information or legal advice. There are criminal and civil penalties under 15 O.S. §85 for giving a false affidavit.

7. Who is responsible for verifying citizenship status?

Title companies are not responsible for verifying citizenship status, although title companies will be in a position to inform customers of this requirement and to facilitate the execution of the Affidavit at or prior to closing of the transaction.

Who is responsible for enforcement?

The Attorney General or the District Attorney of the county where the land is located is responsible for enforcement.

8. What does the Affidavit provide?

The person signing the Affidavit attests to the following:

- 18+ years old
- In the case of an individual, that the affiant is either a U.S. Citizen or an alien who is or may become a bona fide resident of Oklahoma

- In the case of an entity, that the affiant is an officer or trustee of the entity
 - In the case of a business entity, that its direct and indirect owners are U.S. Citizens or bona fide residents of Oklahoma
 - In the case of a trust, that its trustees and direct and contingent beneficiaries are U.S. Citizens or bona fide residents of Oklahoma
- Has personal knowledge
- Acknowledge the law on foreign ownership of property
- Acknowledge compliance with the general ban on using prohibited funding sources under 60 O.S. §121 or any other state or federal law

9. Who must sign the Affidavit?

The current understanding is that each person (or entity) going into title as a grantee must sign a **separate** affidavit. It appears that in their current forms, the Affidavits are two-page documents, so the appropriate amount of recording fees will need to be collected at closing for each grantee.

10. What is a “bona fide” resident?

There is no statutory or judicially determined definition of a bona fide resident in Oklahoma. In a general sense, a bona fide resident is equated with a person’s honest intent to make a place one’s residence or domicile (think the standard for establishing “homestead”). Under the Constitution and Statute, a person does not have to be a resident of Oklahoma at the time of closing of a real estate transaction to purchase property. In other words, persons who may become bona fide residents may purchase real property.

11. What is considered a “deed” under SB212?

At the present time, “deed” means every “deed.” That would include every conveyance of real property and minerals in every form regardless of the type of transaction, whether for consideration or not. This would include a **Transfer-on-Death Deed**, Sheriff’s Deed, Quit Claim Deed, Dedication Deed, “Correction” Deed, Mineral Deed, and every conveyance of real property and minerals, regardless of the type of interest acquired, whether vested or contingent. At the present time, we do not know how other types of “conveyances” will be treated, such as Affidavits of Death and Heirship, Probate Decrees, Divorce Decrees, Affidavits to Terminate Joint Tenancy, etc. It also appears that every grantee must comply, which includes the United States of America, Oklahoma Department of Transportation, Department of Housing and Urban Development, etc.

12. if the Buyer declines to sign the Affidavit, does this stop the closing process?

If a buyer declines to sign the document, the title company will not be able to record the deed with the county clerk.

13. Does the Affidavit require an original signature?

Yes. The Affidavit must be personally executed by the Affiant, although the Affidavit should be accepted for electronic recording (by those county clerks who participate in electronic recording) and should be appropriate for RON (Remote Online Notary) if it complies with the RON statutes.

14. Should a title insurance agent make a requirement in the commitment for title insurance or take exception on the policy relating to SB212?

A title insurance agent should contact their underwriter for guidance regarding an appropriate requirement or when to include an exception for any adverse matters created by violation of Title 60, Oklahoma Statutes, §121, et seq., or based on Article XXII, Section I of the Oklahoma Constitution, or any other similar statutory or constitutional provisions, which restrict alien ownership of real property in Oklahoma.

15. Will the failure of a deed to contain the Affidavit as an exhibit affect marketability?

A title insurance agent should contact their underwriter for guidance.

16. Why are there two Affidavits covering business entities?

The statute provides for separate affidavits for an individual and a business or trust and most transactions will fall within one of these two affidavits. However, the law provides for an exemption for an entity whose activities are engaged in regulated interstate commerce, so there is an additional “Non-Exempt” Business Entity Affidavit. SB212 allows for an exemption for “a business entity that is engaged in regulated interstate commerce in accordance with federal law,” which means that the business activities in Oklahoma must be either (1) expressly permitted by federal regulation or federal law or (2) not prohibited by federal regulation or federal law (such as illegal cannabis industry operations).

17. Can the Affidavits be modified or altered?

At the present time, the Affidavits are not to be modified or altered. As title agents are formatting the Affidavits for their software systems, great care should be taken to make sure that there are not substantive changes to the forms.

18. Does SB212 apply to minerals?

Yes, SB212 applies to all land, which includes surface, soil, rock and other substance and core space, whether severed or not. 60 O.S. §6.

19. What are some of the unanswered questions at this time?

- How will a minor grantee comply with SB212?
- Are there any exemptions or exceptions to SB212?

- What about Dedication Deeds to “the Public?”
- Will there be a hot line for questions at the AGs office?
- Where will a county clerk go to for questions if their District Attorney does not provide guidance?
- When will the Emergency Administrative Rules be available?
- What questions do you have?