

State and Federal Regulation and Restrictions on Foreign Interests in Real Estate

Companies must be aware of laws governing foreign interests in real estate because failure to comply can lead to substantial penalties and even the unwinding of transactions.

About

Federal and state laws apply even if such interest is a passive investment in a U.S. company that owns, leases or has other rights in real estate, such as easements. At Kelley Drye, we offer comprehensive legal services to navigate complex federal and state regulations, restrictions and prohibitions of foreign investment and other interests in U.S. real estate. We help renewable energy, agricultural, and technology companies identify applicable legal requirements, comply efficiently, and accomplish their business objectives.

Federal Law and Regulation

Administered by the U.S. Department of Agriculture (USDA), the Agricultural Foreign Investment Disclosure Act (AFIDA) requires foreign entities—and U.S. entities with as little as 10% foreign ownership—to submit a report to the USDA Farm Service Agency within 90 days of acquiring or leasing agricultural land. Many U.S. companies that use agricultural land for non-agricultural purposes are unaware that AFIDA categorizes them as “foreign” due to partial foreign investment. Even passive investment by a foreign entity can trigger AFIDA disclosure obligations. Non-agricultural uses such as renewable energy development and data center construction are driving AFIDA filings to record levels. Failure to file or the late submission of these reports can result in significant penalties.

State Law and Regulations

A number of states restrict foreign or business entity use of agricultural land, with some states requiring licenses before acquisition, and more require disclosure. We help clients navigate these restrictions and reporting obligations. Successful compliance requires an understanding of not only state laws, but also U.S. treaty rights, and working with state officials where exemptions or licensing requirements apply.

Why Choose Kelley Drye?

- We file more AFIDA reports than any other filer.
- State and federal legislators, regulators and attorney general offices work with us to find mutually beneficial solutions.
- We have developed proprietary software to efficiently file AFIDA reports, reducing the burdens on clients. Our system and processes bring order to the 1970’s file-in-triplicate paper reporting process.

- We lead the AFIDA Modernization Coalition in its work with the FSA and Congress to represent the needs of industry. We have successfully pushed back against mandatory minimum penalties and enhanced disclosure requirements proposed in several reform bills.

Experience

Our Experience Includes:

- **AFIDA Reporting:** Assisting clients to “catch up” on past-due filings and build new processes for timely and accurate reporting of foreign ownership interests in agricultural land.
- **Compliance with State Laws:** Counseling and representing clients before state departments of agricultural and attorney general offices.
- **Government Investigations:** Representing clients in responding to investigations by federal and state agencies into compliance issues and other matters.
- **Exemptions and Requirements:** Providing advice on potential exemptions to the disclosure requirements and interpreting the statutory and regulatory framework for foreign ownership of agricultural land.
- **Transaction Structuring:** Advising clients on the legal implications of federal and state law in relation to foreign investments and structuring transactions to minimize compliance risks, including Committee on Foreign Investment in the United States (CFIUS) proceedings.
- **Advocacy:** Advising and representing companies before the USDA, including the National Appeals Division, on matters including investment tax credit disputes and FSA loan consents.
- **Future Regulation:** Monitoring federal and state land use restrictions and working with FSA staff to develop the new FSA 153 online disclosure process. We provide insight on where AFIDA and state regulation are trending and influence legislation and rulemaking to meet client business needs.
- **Training and Education:** Providing training through national CLE platforms, speaking engagements, customized sessions for client employees, and in national publications.

We understand the legal complexities and nuances of foreign real estate interests and work closely with our clients to navigate the challenges that arise.

Related Services

Real Estate
International Trade
White Collar, Investigations and Compliance

Contacts

[Matthew C. Luzadder](#)
mluzadder@kelleydrye.com

[Jeffrey J. Hunter](#)
jhunter@kelleydrye.com