

News & Insights

Hall Estill Tulsa Attorney Natalie Sears for the Journal Record - New Oklahoma Law Affects Real Property Ownership

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On November 1, Senate Bill 212 went into effect. Primarily sponsored by Sen. David Bullard and Rep. Justin Humphrey, it amended 60 Okla. Stat. § 121, which affects ownership of real property by foreign citizens. Gov. Kevin Stitt signed it on June 6.

This new amendment did not change preexisting requirements of land ownership as provided for in the Oklahoma Constitution. Rather, it was amended to require any deed recorded with a county clerk to include an affidavit as an exhibit to the deed executed by the person or entity coming into title attesting that the person, entity, or trust is taking title in compliance with laws on foreign ownership of property. This revised statute is not retroactive, and it applies only to deeds recorded after Nov. 1.

This has created an administrative burden for estate planners. When an individual sets up a simple revocable trust and wants to transfer their current home into their trust, said individual now must file an affidavit in compliance with the law even for real property they own. This increases the recording cost by $2 a page, and the affidavit provided by the Oklahoma Attorney General's Office, results in a minimum of $4 per deed in additional fees.

In addition, a Transfer on Death Deed, which is a common tool utilized to avoid probate, now requires the affidavit to be filed. A Transfer on Death Deed is a deed that allows a person to transfer ownership interest to another upon death. This deed is revocable and does not transfer any interest within the property until the owner dies. There is confusion as to whether this applies to this particular type of deed, but currently, the statute is being strictly construed. Therefore, because it is a deed, the individual set to inherit the property now must file an affidavit attesting compliance with 60 O.S. § 121. This will apply to Quit Claim Deeds, General Warranty Deeds, Personal Representative's Deeds and the like. Each heir will need to sign an affidavit attesting to their citizenship, which could post significant issues with heirs where their whereabouts are unknown.

It is important to note that SB 212 did provide for protections for lands now owned by foreign citizens that are bona fide residents within the state of Oklahoma.

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