



OKLAHOMA
Real Estate Commission

SENATE BILL 212 YOUR QUESTIONS ANSWERED

What does Senate Bill 212 require?

SB 212 requires any deed that is recorded with the county clerk to include an affidavit as an exhibit that is executed by the person, entity, or trust coming into title attesting that the person, entity, or trust is taking title in compliance with state laws on foreign ownership of property.

Who is responsible for the Affidavit being signed by a Buyer?

The Buyer is ultimately responsible for executing the Affidavit for the County Clerk to record their deed. Title companies will provide the Affidavit at closing for execution. Real Estate Licensees should reasonably inform Buyers early in the process that an Affidavit will be required to close. Real Estate Licensees should communicate with clients and the title company to ensure this Affidavit is executed at or before closing of the transaction. The Oklahoma Real Estate Commission suggests that real estate licensees provide this affidavit to buyers early in the process to make sure the consumer is well-informed and has the opportunity to ask questions or seek further information/advice early in the process.

Who is responsible for verifying citizenship status?

Real Estate Licensees are NOT responsible for verifying citizenship status. A real estate licensee's only responsibility for SB 212 purposes is to inform clients of this requirement and help make sure the form is made available to them for signature at or prior to closing of the transaction.



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What does the Affidavit say?

- 18+ years old;
- Either a U.S. Citizen or an alien who is or *may become a bona fide resident of Oklahoma*
- Acknowledge the law on foreign ownership of property;
- Acknowledge compliance with general ban on using prohibited funding sources under 60 O.S. Section 121 or any other state or federal law

What persons or entities are able to purchase property moving forward?

- U.S. Citizens;
- Native Americans born in the United States;
- Aliens or persons who are NOT citizens of the U.S. who are or *may become bona fide residents* of Oklahoma
- Business Entities or Trusts who are similarly attesting that they are either U.S. citizens or NOT U.S. citizens but may become bona fide residents of Oklahoma.

What is a bona fide resident?

There is no set definition of a bona fide resident in Oklahoma. A bona fide resident is equated with a person's honest, good faith intent to make a place one's residence or domicile. A person is **NOT** required to be a resident of Oklahoma at the time of closing on a real estate transaction to be eligible to purchase property. The State Constitution allows persons who *may become* bona fide residents to purchase property. Business entities formed in other states or countries should follow domestication procedures by registering their business entity with the Oklahoma Secretary of 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).



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

Does this law change who is eligible to purchase property in Oklahoma?

No, this law does not change purchaser eligibility. If a person, entity, or trust was able to purchase property before this law went into effect, they may still purchase property now. SB 212 simply adds the procedural requirement that a person, entity, or trust coming into title must execute an affidavit to enable the county clerk to file a deed.

What types of real estate transactions require an affidavit now?

Any real estate transaction where a deed is recorded with a county clerk. This also applies to minerals because the definition of “land” under the law includes soil, rock, other substance and pore space (including oil or gas) (60 *Okla. Stat.* § 6).

What happens if a person, entity or trust refuses to execute an affidavit?

The county clerk will NOT record a deed without such affidavit.

The Affidavit says deed, but what about final decrees or affidavits of death and heirship? Will you have to get every heir/devisee to sign one before you can file the final decree? If an interest is acquired through succession via probate or affidavit of death and heirship, will the affidavit be required?

It is not required that every heir/devisee sign an affidavit before the final decree can be filed. This law change only applies to recording a deed. That said, every grantee in a transaction where a deed is to be recorded will have to include the affidavit as an exhibit to the deed.



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Real Estate Commission

SENATE BILL 212 YOUR QUESTIONS ANSWERED

When a Business Entity or Trust purchases property, who should sign this affidavit required by SB 212?

The Affidavit provides a fill-in-the-blank space for a duly authorized individual to execute the affidavit on behalf of the entity or trust. Examples include the trustee of a trust, officer of a business entity, and manager of an LLC. Consult a legal professional if you are unsure who may properly sign on behalf of an entity or trust.

Will this law impact investors who are abroad purchasing residential real estate in Oklahoma?

Investors who are bona fide residents or “may or shall become bona fide residents” are **NOT** prohibited from purchasing property under this law. Article 22 Section 1 of the OK Constitution provides that the prohibition on purchasing real property/land does NOT apply to (1) Native Americans born within the United States nor (2) aliens or persons who are NOT citizens of the U.S. who may become bona fide residents of the State.

Is there going to be a document for licensees to have Buyers sign when submitting an offer?

The Buyer(s) just need to sign the OREC Sales Contract / Purchase Offer which will now include a new provision affirming the Buyer is either a U.S. Citizen, alien, or non-citizen of the U.S. capable of executing the affidavit at or prior to closing.



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Would you suggest inclusion of an info sheet to transaction documents, or will the addition of a paragraph in the purchase contract cover proper explanation?

We suggest that real estate licensees go over this requirement with purchasers early in the process, and provide the Affidavit or the provision being added to the purchase contract. Additionally, OREC will provide real estate licensees with a one-page information sheet on this topic that licensees can provide to all Buyers to give them further information before they submit an offer.

Will we need to get this document from transaction desk, or just rely on the title company to take care of it?

Title companies will provide this document at closing, but the Oklahoma Real Estate Commission strongly encourages real estate licensees to discuss this topic with the Title company they will use before closing to ensure it will be provided. The form will also be available on OREC's contract forms page.

If the Buyer declines to sign the document, will this stop the closing process?

If a buyer declines to sign the document, they will NOT be able to record the deed with the county clerk. It is likely possible that a transaction can close without execution of the affidavit, but the deed will not be recorded by a county clerk without such affidavit.



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SENATE BILL 212 YOUR QUESTIONS ANSWERED

Does the Affidavit require a Notary?

Yes.

Sheriff and County Tax Property Sales: The Buyers buying it at County auctions with no Title Company involved will have to fill out the Affidavit too, correct?

Yes, the county clerk will require an affidavit to be signed to record a deed.

Can you add this to the "Contract Information Booklet" provided by OREC?

Yes.

Will the Affidavits be available in Spanish or other languages?

No – the Attorney General is solely responsible for creating this Affidavit. Providing it in Spanish or other languages is not something included in the SB 212 requirements.

What liability do real estate licensees face with this new law?

Real estate licensees are not responsible for verifying citizenship status, eligibility or accuracy. Enforcement of this law (60 *Okla. Stat.* § 121) is not the responsibility of real estate licensees or the county clerk. The county clerk's role is limited to ensuring that an affidavit is included with all deeds recorded after 11/1/2023.



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Real Estate Commission

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What happens if the original deed (filed in previous years) is only refiled to correct a legal description, name, or typo? Is it required to have an affidavit?

Unless the Attorney General's Office exempts a deed from having to be filed with an affidavit required by 60 *Okla. Stat.* § 121, any deed, including corrective deeds, must have the requisite affidavit included.

Where can I review the affidavits?

Individual Affidavit -

https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/affidavit_for_title_or_ownership_of_land_-_individual_1.pdf

Non-Exempt Business Entities/Trusts:

https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/affidavit_for_title_or_ownership_of_land_-_non-exempt_business_or_trust.pdf

Exempt Business Entity or Trust:

https://www.oag.ok.gov/sites/g/files/gmc766/f/documents/2023/affidavit_for_title_or_ownership_of_land_-_exempt_business_or_trust.pdf