Foreign Investment in Real Estate: New York
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A Q&A guide to foreign investment in commercial real estate in New York. This Q&A addresses state laws and customs that impact out-of-state domestic company investors and foreign (non-US) company investors. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see Foreign Investment in Real Estate: State Q&A Tool).

Out-of-State Domestic Company Investor

1. Is state permission required for out-of-state domestic company investors to acquire real property?

State permission is not required merely because an out-of-state US business entity acquires real property in New York.

However, an out-of-state US business entity doing business in New York must register with the New York Secretary of State. The New York Department of State does not give opinions of what activities constitute “doing business” in New York for qualification purposes. While there is no statutory definition of “doing business” in New York, New York statutes provide a nonexclusive list of activities that do not constitute transacting business for a foreign corporation:

- Maintain or defend an action or proceeding, or effecting a settlement in an action, proceeding, claim, or dispute.
- Hold meetings of the corporation’s directors or shareholders.
- Maintain bank accounts.
- Maintain offices or agencies only for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries relating to the corporation’s securities.

(N.Y. Bus. Corp. Law § 1301.)

While owning real property might not qualify as doing business in New York, most foreign companies acquiring real property in New York will obtain a certificate of authority as typically required by most lenders. Additionally, a foreign company that is not authorized to do business in New York can have its motion dismissed for failure to state a cause of action if it seeks to commence an action in a New York court (N.Y. Bus. Corp. Law § 1312(a)).

2. Are there any other state restrictions for out-of-state domestic investors purchasing real property or interests in entities which own real property?

Out-of-state US business entities owning real property in New York are subject to any restrictions imposed:

- On New York entities undertaking the same activity.
- By New York laws generally regarding foreign entities.

(N.Y. Real Prop. Law §§ 10(2) and 16.)

The laws of the jurisdiction under which a foreign limited liability company is formed govern:

- Its organization.
- Its internal affairs.
- The liability of its members and managers.

(NY LLCL § 801.)
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3. Describe reporting requirements that relate solely to out-of-state domestic (direct and indirect) owners of real property, in relation to:
   • Acquisition.
   • Ownership.
   • Disposition.

New York has no reporting requirements that relate solely to out-of-state domestic owners of real property for acquisition, ownership, or disposition. However, out-of-state domestic owners of New York real property will likely have tax reporting obligations with respect to any New York property interest (see Questions 4 and 5).

4. What are the seller’s and purchaser’s tax obligations when out-of-state owned real property is transferred?

Certain types of business entities owning or leasing real property in New York are subject to an annual franchise tax, regardless of whether that entity is doing business in New York (N.Y. Tax Law § 209(1)).

**Seller’s Obligations**

Under New York tax law, a seller may be taxed on the gain realized from the sale of real property (see Question 5). Additionally, certain transfers of real property or a controlling interest in an entity that owns real property in New York incur a New York State transfer tax that is primarily the obligation of the transferor (N.Y. Tax Law §§ 1401, 1402, 1402-a, and 1404; see State Q&A, Real Estate Ownership: New York).

**Purchaser’s Obligations**

When the transferor of real property or controlling interest in an entity that owns the real property in New York is subject to the New York State transfer tax, the transferee may be held liable for the tax if the transferor either:
   • Is exempt from payment of the tax.
   • Does not actually pay the tax.
   (N.Y. Tax Law § 1404(a).)

Additionally, under revenue legislation included in the budget for the 2020 fiscal year, transferees are liable for payment of the mansion tax and supplemental tax to the extent they are applicable to the property in question (N.Y. Tax Law § 1402-a and 1402-b; see State Q&A, Real Estate Ownership: New York).

5. What state taxes are levied solely on out-of-state domestic individuals or entities acquiring or transferring real property or ownership interests in entities that own real property?

In addition to paying any applicable transfer tax (see Question 4), any out-of-state individual, estate, or trust that is selling New York real property or a controlling interest in an entity that owns real property do all of the following:
   • Estimate the New York State income tax payable on the gain, if any, realized from the transfer.
   • File the Non-resident Real Property Estimated Income Tax Payment Form (Form IT-2663) with the county clerk.
   • Pay the estimated income tax to the county clerk when the deed is recorded.
   (N.Y. Tax Law § 663.)

As of January 1, 2012, the tax rate for the gain reported by non-residents on Forms IT-2663 and IT-2664 is 8.82%.

Form IT-2663 is available through the New York State Department of Taxation and Finance Forms and Instructions webpage.

6. Are out-of-state domestic investors required to invest with a local partner? If not, is investment with a local partner advisable?

Out-of-state domestic investors are not required to include a New York business entity or resident in their New York business activities.

Investment with a local partner is typically not necessary.

7. Describe what investment vehicles out-of-state domestic investors typically use? For example, are preferred equity structures more common than outright ownership structures?

Investors typically prefer to use a business entity (whether in-state or out-of-state) where equity owners have limited
liability instead of outright ownership of real property by individuals.

The following New York business structures are commonly used to acquire New York real property:

- Limited liability company (most common).
- Limited partnership.
- Corporation (least common).

Tax considerations may dictate which of these entities is preferable.

### Foreign (Non-US) Company Investor

**8. Is state permission required for foreign investors to acquire real property?**

State permission is not required merely because a non-US business entity or person owns real property in New York. Foreign investors have substantially the same rights and duties regarding real property as US persons and entities (N.Y. Real Prop. Law §§ 10(2) and 16).

However, any business entity should consider if it is “doing business” in New York, in which case it must register with the New York State Secretary of State (see Question 1).

**9. Are there any other state restrictions for foreign investors purchasing real property or interests in entities which own real property?**

Non-US business entities owning real property in New York are subject to any restrictions imposed both:

- On New York entities undertaking the same activity.
- By New York laws regarding such foreign entity. (N.Y. Real Prop. Law §§ 10(2) and 16.)

The laws of the jurisdiction under which a foreign limited liability company is formed govern:

- Its organization.
- Its internal affairs.
- The liability of its members and managers. (NY LLCL § 801.)

### Reporting Requirements

**10. Describe reporting requirements which relate solely to foreign (direct and indirect) owners of real property in relation to:**

- Acquisition.
- Ownership.
- Disposition.

New York has no reporting requirements that relate solely to foreign owners of real property for acquisition, ownership, or disposition.

However, previously, foreign investors often used limited liability company (LLC) structures to avoid reporting the identities of beneficial owners. After a 2019 amendment to the New York Tax Law, a grantor or a grantee of a deed for residential real property with one to four dwelling units that is an LLC must file with the transfer tax form a document identifying either:

- The names, taxpayer ID numbers (TIN), and business addresses of the LLC’s members, managers, or other authorized persons.
- The names and business addresses of all shareholders, directors, officers, members, managers, and partners of any LLC or other entity that are to be the members, managers, or authorized persons of the LLC. (N.Y. Tax Law § 1409(a.).)

The New York Department of Taxation and Finance (NYDTF) has provided guidance that this does not apply to residential condominiums or cooperatives outside of New York City. Within New York City, the transfer tax form must disclose the name and TIN of the principal LLC’s members only. For additional guidance on real property transfers by LLCs, see the NYDTF: Real Estate Transfer Tax.

Although outside the scope of this Q&A, certain cash purchases by foreign and domestic entities of high end residential real property in New York City are subject to reporting requirements regarding the beneficial ownership of the entity under Geographic Targeting Orders issued by the Financial Crimes Enforcement Network (FinCEN) (see Article, FinCEN Real Estate Geographic Targeting Orders). Additionally, the federal government may suspend or prohibit certain transactions for national security reasons under the Defense Production Act of 1950 (50 U.S.C. § 4565). The Foreign Investment Risk Review Modernization Act of
2018 and the US Treasury proposed rules in 2019 expand this power with respect to real estate transactions.

11. What are the seller’s and purchaser’s tax obligations when foreign-owned real property is transferred?

The tax obligations for foreign owners of real property in New York are the same as for out-of-state domestic owners and in-state owners (see Question 4). A seller of New York real property is also likely subject to taxation under the federal Foreign Investment in Real Property Tax Act.

12. What state taxes are levied solely on foreign individuals or entities acquiring or transferring real property or ownership interests in entities that own real property?

New York levies no taxes solely on foreign individuals or entities acquiring or transferring real property or ownership interests in entities that own real property.

Foreign individuals and entities are subject to the same taxes that apply to domestic out-of-state individuals or entities (see Question 5).

13. Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Foreign investors are not required to include a New York business entity or resident in their New York business activities.

Investment with a local partner is typically not necessary.

14. Describe what investment vehicles foreign investors typically use? For example, are preferred equity structures more common than outright ownership structures?

A foreign investor typically forms a New York or out-of-state US business entity in which individual equity owners have limited liability.

The following New York business structures are commonly used to acquire New York real property:

- Limited liability company (LLC). For information regarding certain public disclosures of beneficial owners of LLCs, see Question 10.
- Limited partnership.
- Corporation.

Tax considerations may dictate which of these entities is preferable. Many foreign investors in New York real property choose to invest through a corporation (which may create subsidiaries for each real property investment using any of the above business structures) to mitigate US federal income tax reporting.