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Problem Areas Concerning Foreign Investment in U.S. Real Estate

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Current problems related to foreign investment in real estate have a long and involved history. After a brief historical review, this perspective will consider present limitations on alien ownership of real estate, inconveniences such as disclosure of ownership, and incidental administrative side effects which place the foreign investor in a different position than a U.S. investor.

HISTORICAL BACKGROUND

Understanding some of the special present difficulties of foreign land ownership requires some historical understanding of some common law notions concerning land. The United States, for the most part, derives its land law from the English common law tradition.¹ Under the English feudal system of land tenure, foreigners were logi-

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¹ For a more complete discussion of the development of these common law notions, see Fisch, *State Regulation of Alien Land Ownership*, 43 MO. L. REV. 407 (1978); Morrison, *Limitations*

cally excluded from direct land ownership. Foreign land owners could not be expected to be loyal to the king or his nobles.² As a practical matter, however, direct holding was not always necessary because the chancery court developed trust concepts permitting local trustees to hold title to land for the benefit of foreign beneficiaries.³ In England, the ban against foreign ownership of property was eventually removed by statute in 1870.⁴

The common law of England was, of course, the common law of the English colonies, and the traditions of the colonies lingered into the Republic. After the Revolution, many states enacted constitutions or statutes specifically removing some common law prohibitions and permitting aliens to inherit and, later, to purchase land up to a prescribed maximum acreage.⁵ To the extent not cured by specific legislation, the old restrictions remained.⁶

Although most states placed minimal restrictions on alien land ownership, those restrictions displayed a bewildering, "Alice-in-Wonderland" variety that can only be explained by historical considerations.⁷ For example, the influx of immigrant farmers into the Prairie States at the end of the last century was a stimulus for legislative restrictions on extensive alien landholding except by immigrants who in-

on Alien Investment in American Real Estate, 60 MINN. L. REV. 621 (1976); Sullivan, *Alien Land Laws: A Reevaluation*, 36 TEMP. L.Q. 15 (1962).

² Morrison, *supra* note 1, at 623.

³ *Id.*

⁴ Naturalization Act, 1870, 33 & 34 Vict., c. 14, § 2.

⁵ Morrison reports that Pennsylvania's statutes were "progressively qualified, first to grant aliens inheritance rights, then to permit resident aliens to purchase 500 acres, and finally to permit purchases of up to 5,000 acres." Morrison, *supra* note 1, at 624. See also PA. STAT. ANN. tit. 68, §§ 22 (originally enacted as Supplement of Feb. 23, 1791, ch. MDXVII), 25 (originally enacted as Act of Feb. 10, 1807, 1807 Pa. Laws, ch. XVII), 28 (originally enacted as Act of Mar. 24, 1818, 1818 Pa. Laws, ch. CLVII) (Purdon 1965).

In 1804, Ohio became the first state to completely remove all land-holding restrictions for aliens, 1804 Ohio Laws 123; (cited in Sullivan, *supra* note 1, at 29 n.63).

⁶ Sullivan contends that "actual removal of disabilities became less imperative once the capacity to remove them at will had been won. When the need seemed pressing, liberal policies were followed, but where it did not, the common law disabilities were retained or replaced by comparable legislative restrictions." Sullivan, *supra* note 1, at 29.

⁷ Fisch succinctly lists a number of the factors underlying the various state restrictions:

(a) the manner or source of acquisition (descent, purchase, from the state); (b) the nature of the holding (agricultural or rural, or size of holding); (c) the status of the alien (nonresident of the state, nonresident of the United States, nondeclarant immigrant, ineligible for citizenship, citizen of a nation not affording reciprocal rights, enemy alien); (d) the remedy for a prohibited holding (escheat or mandatory alienation within a specified period of time); (e) special conditions attached to an otherwise permissible holding (registration or continuation of a particular use).

Fisch, *supra* note 1, at 409-11 (footnotes omitted).

tended to become U.S. citizens.⁸

On the West Coast, racial hatred and fears of destructive alien competition resulted in statutes that prohibited ownership by "aliens ineligible for citizenship," which, under then existing immigration laws, primarily meant Orientals.⁹

CURRENT FEDERAL AND STATE RESTRICTIONS

Responding to the nationalist sentiments of late-nineteenth century Americans, Congress enacted the Territorial Land Act of 1887.¹⁰ To this day, unless permitted by existing treaty provisions, federal law prohibits non-resident aliens who have not declared their intent to become U.S. citizens from purchasing land in federal territories.¹¹ Federal law also prevents aliens without declared intent, from owning or exploiting federally owned resources, such as homestead land,¹² grazing land,¹³ mineral deposits,¹⁴ offshore oil tracts,¹⁵ and geothermal

⁸ For a vivid description of the xenophobic populist movement that led to such restrictions in these midwestern states—*i.e.*, Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin (which previously did not discriminate against alien landholders), and Idaho, Indiana, and Texas (which tightened their restrictions)—see Sullivan, *supra* note 1, at 30-32.

These statutory restrictions followed the common legislative pattern of alien landholding laws: they grew old and lifeless, but legislative neglect kept them technically alive. "As Populism died out, agitation against the absentee [alien landlord] waned, and whatever justification there may have been for the legislation disappeared; the restrictions nevertheless remained part of the law of most of the states concerned, and they make up the greater part of those still in force." Sullivan, *supra* note 1, at 32.

⁹ 1913 Cal. Stat. 206; 1921 Cal. Stat. lxxxiii (proposition submitted to vote of electors and approved); Sullivan, *supra* note 1, at 33. For a description of these laws, see McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CALIF. L. REV. 7 (1947).

Most racially discriminatory statutes of this kind have been repealed. After World War II, most states repealed or judicially dismantled such laws, and federal legislation eliminated the "ineligible alien" class from the immigration laws in 1952. See Morrison, *supra* note 1, at 627-28; Sullivan, *supra* note 1, at 32-34. For a specific state study, see Note, *Are Oklahoma's Restrictions on Alien Ownership of Land Constitutional?*, 32 ORLA. L. REV. 144 (1979).

Those racially discriminatory statutes that remain probably are unconstitutional. The United States Supreme Court upheld such a statute in *Terrace v. Thompson*, 263 U.S. 197 (1923), and in *Porterfield v. Webb*, 263 U.S. 225 (1923). Twenty-five years later the Court limited these precedents by its holding in *Oyama v. California*, 332 U.S. 633 (1948), which stated that such statutes did not apply to a native-born citizen of Oriental descent. The concurring opinions in *Oyama* challenged the constitutionality of the discriminatory statutes themselves. *Id.* at 647 (Black & Douglas, JJ., concurring), 650 (Murphy & Rutledge, JJ., concurring).

¹⁰ 48 U.S.C. §§ 1501-1507 (1976).

¹¹ *Id.* at § 1501.

¹² 43 U.S.C. § 161 (1976); 43 C.F.R. § 2511.1(b)(3) (1978).

¹³ 43 U.S.C. § 315b (1976); 43 C.F.R. § 4110.1(a) (1978).

¹⁴ 30 U.S.C. § 181 (1971). The regulations state:

Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privilege to citizens of the United States. If any appreciable percentage of the

steam resources.¹⁶ Under the Foreign Assets Control Regulations, aliens of four nations—the People's Republic of China, Cambodia, North Korea, and Viet Nam—are required to obtain prior approval and clearance from the Treasury Department for all transactions concerning their property in the United States.¹⁷ In addition, similar restrictions limit the U.S. real estate transactions of the governments of Cuba¹⁸ and, more recently, Iran.¹⁹ One final restriction applies during wartime; in time of declared war, enemy property vests by federal law in federal officials.²⁰

In the United States, land law is basically state law. As suggested earlier, the laws of the fifty states are quite varied, and any general statements made about them can certainly be contradicted. Nevertheless, three broad generalizations can be made concerning the types of discrimination experienced by prospective alien investors in real estate:

Land Ownership. Aliens may be barred directly from ownership of U.S. real estate by location restrictions, such as those that restrict alien ownership of land outside of urban areas;²¹ quantitative restrictions, such as those that limit total holdings to 320 acres or a square mile;²² and time restrictions, such as the Illinois six-year holding limitation.²³

Land Use. Aliens and corporations also may be prohibited from owning land devoted to particular uses, such as agriculture, where the effect of alien ownership is to undermine the "family farm."²⁴ In such cases, aliens and corporations with more than perhaps twenty-five

stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

43 C.F.R. § 3102.1-1(a) (1978).

¹⁵ 43 C.F.R. § 3300.1 (1978).

¹⁶ 30 U.S.C. § 1015 (1976); 43 C.F.R. § 3202.1 (1978).

¹⁷ 31 C.F.R. §§ 500.101-.204, (1979).

¹⁸ 31 C.F.R. §§ 515.101-.204 (1979).

¹⁹ 44 Fed. Reg. 65,956 (1979) (to be codified in 31 C.F.R. §§ 535.101-.901).

²⁰ 50 U.S.C. app. § 5 (1976 & Supp. I 1977); 8 C.F.R. §§ 501-510 (1978).

²¹ See, e.g., IOWA CODE ANN. § 567.1 (West 1979); MINN. STAT. ANN. § 500.221 (West 1979); NEB. REV. STAT. § 76.414 (1976). See also Fisch, *supra* note 1, at 410 n.22 & 23.

²² See, e.g., IND. CODE ANN. § 32-1-8-2 (Burns 1979) (limit 320 acres); IOWA CODE ANN. § 567.1 (West 1979) (limit 640 acres); 68 PA. CONS. STAT. § 32 (1965) (limit 5,000 acres); S.C. CODE § 27-13-30 (1977) (limit 500,000 acres); WIS. STAT. ANN. § 710.02 (1969) (limit 640 acres). See also Fisch, *supra* note 1, at 410 n.24.

²³ ILL. ANN. STAT. ch. 6, § 2 (Smith-Hurd 1976). See also IND. CODE 32-1-7-1 (Burns 1973); IOWA CODE ANN. § 567.1 (West 1979); KY. REV. STAT. §§ 381.320, .330 (1972); MINN. STAT. ANN. § 500.221 (West 1979); NEB. REV. STAT. § 76-411 (1976); OKLA. STAT. ANN. tit. 60, § 123 (1971); S.C. CODE § 27-13-30 (1977); Fisch, *supra* note 1, at 411 n.32.

²⁴ See, e.g., 1975 Iowa Acts 309 (1975); KAN. STAT. § 17-5901 (1974); MINN. STAT. ANN. § 500.24 (West 1979); 1975 Mo. Laws 326 (1975); N.D. CENT. CODE § 10-06-01 (1976); OKLA. STAT. tit. 18, § 951 (1979); S.D. CODE § 47-9A-3 (1979); WIS. STAT. § 182.001 (1979); Morrison, *supra* note 1, at 635 n.100.

shareholders fare equally poorly, causing about equal amounts of alarm. If the use of the land will be industrial, purchase of farm land is all right, but development time may be short.²⁵

Illinois, for example, is one state that has enacted a statute that formally limits the ability of an alien investor to purchase, hold, or inherit real estate. An Illinois statute provides that aliens may acquire, hold, or dispose of real estate by purchase or inheritance, and may dispose of this land as they see fit.²⁶ This has been the case since 1897.²⁷ The exercise of these rights is limited, however, to the six years after an alien acquires the title.²⁸ If the alien is under 21 when he acquires the title, he is entitled to retain the property for six years after reaching the age of 21.²⁹ A failure to dispose of the land by the alien can result in a forced sale of the land by the State of Illinois.³⁰

Ancillary Restrictions. Some states control alien ownership by restricting inheritance. These restrictions are not to be confused with tax consequences; they are, instead, flat bans on the ownership of property, or on the receipt of inheritance proceeds by foreign heirs. The theory may be lack of reciprocity³¹ or doubt, with regard to citizens of Communist countries, that the heir will actually benefit from his inheritance.³²

Given the historical treatment of foreign owners it should be no surprise that the recent spectre of oil money flowing into the United States has triggered new anxiety among legislators. The new statutes appear somewhat more sensitive to constitutional issues of equal protection and substantive due process. This is particularly true after the Supreme Court decisions in *Graham v. Richardson*³³ and *Sugarman v.*

²⁵ See, e.g., MINN. STAT. ANN. § 500.24(3)(h) (West 1979); Morrison, *supra* note 1, at 635 n.102.

²⁶ ILL. REV. STAT. ch. 6, § 1 (1975). All of Chapter 6 of the Illinois Revised Statutes is devoted to the rights of aliens. ILL. REV. STAT. ch. 6, §§ 1-16 (1975).

²⁷ 1887 Ill. Laws 5.

²⁸ ILL. REV. STAT. ch. 6, § 2 (1979).

²⁹ *Id.*

³⁰ *Id.*

³¹ See, e.g., IOWA CODE § 567.8 (1979); NEB. REV. STAT. § 4-107 (1976); N.C. GEN. STAT. § 64-3 (1975); WYO. STAT. § 2-3-107 (1977); Morrison, *supra* note 1, at 638.

³² See, e.g., CONN. GEN. STAT. ANN. § 45-278 (West 1979); MASS. ANN. LAWS ch. 206, § 27B (Michie/Law Co-op 1969); N.J. STAT. ANN. § 3A:25-10 (1953); N.Y. Surr. Ct. Proc. Act § 2218(3) (McKinney 1979); WIS. STAT. § 863.37 (1971); Morrison, *supra* note 1, at 637.

³³ 403 U.S. 365 (1971). In this case and others, aliens were found to be "a prime example of a 'discrete and insular minority' . . . for whom . . . heightened judicial solicitude is appropriate." *Id.* at 372 (1971).

Fisch argues that, if the equal protection clause applies to nonresident—as opposed to resident—aliens at all, the category of "nonresident aliens" is not "suspect," and thus subject to a lesser standard of review.

Dougall.³⁴

There is also a greater sensitivity to the impact on foreign countries, particularly on those having entered into treaties of navigation, friendship, and trade. The Supreme Court in *Zschernig v. Miller*,³⁵ required Oregon courts to avoid interfering with international relationships by ignoring diplomatic certificates and by reaching political conclusions as to the state of affairs in Communist countries. The more sophisticated, new legislation may stand a much better chance of surviving constitutional attacks, particularly in light of information generated by new ownership disclosures act.

DISCLOSURE REQUIREMENTS

The Foreign Investors Study Act of 1974³⁶ may be viewed as a preliminary step to a further round of restrictive state and federal legislation. This Act commissioned the Secretaries of Commerce and Treasury to make extensive studies of various areas of investment, including an analysis of the effects of foreign direct investment in United States real property, including agricultural land.³⁷ The authority for this investigation expired after the due date for completion of its re-

Whatever the position of aliens resident in the United States seeking to earn a living, a class which includes over ninety percent of the world's population can scarcely be a "discrete and insular minority for whom heightened judicial solicitude is appropriate." This notion is strengthened because, by hypothesis, only investment is at stake, not the means of earning a living. To be sure, the nonresident alien is just as much excluded from the relevant political community as the resident, if not more so, and has even less opportunity to influence *directly* the decisions affecting his interest. However, the nonresident's stake in the community is correspondingly limited, and he is much more likely than the resident alien to have the countervailing diplomatic support of his home government. "Heightened judicial solicitude" seems therefore less necessary.

If the lesser standard of "minimum rationality" applies, it is highly likely that such statutes would pass muster, as the Wisconsin court held.

Fisch, *supra* note 1, at 417 (emphasis in original) (citing *Lehndorff Geneva, Inc. v. Warren*, 74 Wis. 2d 369, 246 N.W.2d 815 (1976)). *Fisch* does note that, if strict scrutiny is applied to statutes restricting nonresident aliens from landownership, the statutes will likely fall. *Id.* at 418. He further states:

Ownership of land scarcely rises to the level of membership in the political community; it is no longer permissible to make such ownership a condition of the franchise in elections of general interest. Moreover, exclusion of nonresident aliens, as distinguished from nonresident United States citizens, cannot be said to be *necessary* to the protection of any of the interests claimed to lie behind restrictions on ownership of agricultural land (control of prices, control of disposition of crops, preservation of the family farm). All of those interests are susceptible of more direct protection and the protective urge of the nonresident citizen is at best speculative.

Id. at 418 (emphasis in original) (footnotes omitted). *See also Morrison*, *supra* note 1, at 642-44.

³⁴ 413 U.S. 634 (1973).

³⁵ 289 U.S. 429 (1968).

³⁶ Pub. L. No. 93-479, 88 Stat. 1450 (1974).

³⁷ *Id.* at § 5(6).

port,³⁸ and nothing much directly came of it.

The 1974 Act was followed by the International Investment Survey Act of 1976.³⁹ Besides investment by aliens in U.S. real estate, this Act also covered various types of direct and portfolio investment, both by U.S. citizens abroad and by foreigners in the United States.⁴⁰ In section 3103(d), the Act specifically directed:

the President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agriculture, rural and urban real property, including the feasibility of establishing a nationwide multi-purpose land data system, and shall submit to the Congress an interim report of the findings and conclusions not later than two years after October 11, 1976 a final report of such findings not later than three years after October 11, 1976.⁴¹

In addition, benchmark surveys of foreign direct investment in the United States are generally required at least once every five years.⁴² The regulations issued under the 1976 Act⁴³ will remind many connoisseurs of government information gathering of the foreign direct investment program regulations developed after 1968.

Perhaps the most interesting development for foreign real estate investors is the Agriculture Foreign Investment Disclosure Act of 1978 (AFIDA).⁴⁴ The AFIDA requires a foreign person who owns, acquires, or transfers an interest, other than a security interest, in agricultural land to report the transaction to the Secretary of Agriculture.⁴⁵ The report must supply detailed information including name, address, citizenship, type of interest held, purchase price, and agricultural purposes intended.⁴⁶ "Foreign person" is defined to include any legal entity in which "a significant interest or substantial control is directly or indirectly held" by a foreigner.⁴⁷ Failure to report can result in a fine of up to twenty-five percent of the fair market value of the real estate involved.⁴⁸

³⁸ *Id.* at §§ 7(b), 10, 88 Stat. 1452, 1453-54.

³⁹ 22 U.S.C. §§ 3101-3108 (1976 & Supp. I 1977).

⁴⁰ *Id.* at § 3103.

⁴¹ *Id.* at § 3103(d).

⁴² *Id.* at § 3103(b).

⁴³ 15 C.F.R. §§ 806.1-.17 (1979).

⁴⁴ Agricultural Foreign Investment Disclosure Act of 1978, Pub. L. No. 95-460, §§ 1-10, 92 Stat. 1263 (1978) (to be codified in 7 U.S.C. §§ 3501-3508). For a discussion of the congressional intent and background of AFIDA, see Zagaris, *The Agricultural Foreign Investment Disclosure Act of 1978: How Will It Affect the Market in U.S. Real Estate?*, 8 REAL EST. L.J. 3, 11-13 (1979).

⁴⁵ Agricultural Foreign Investment Disclosure Act of 1978, Pub. L. No. 95-460, § 2, 92 Stat. 1263-65 (1978) (to be codified at 7 U.S.C. § 3501).

⁴⁶ *Id.*

⁴⁷ *Id.* at § 9(3), 92 Stat. 1266-67 (to be codified at 7 U.S.C. § 3508(3)).

⁴⁸ *Id.* at § 3, 92 Stat. 1265 (to be codified at 7 U.S.C. § 3502).

The regulations promulgated pursuant to the AFIDA amplify the statute considerably. They make it clear that although only one report may be required for each control group, full disclosure as to ownership information is required up to—but not beyond—at least three tiers of control.⁴⁹ The agricultural land involved is any land exceeding one acre which is or was, within the past five years, used for agricultural, forestry or timber production.⁵⁰ Although response was probably neither enthusiastic nor accurate, over 6500 reports had been received by the end of last year.⁵¹

These reports disclosed that foreign ownership is less than one-half of one percent of the 1.23 billion acres of agricultural land held in private hands in the United States.⁵² Three-quarters is held by U.S. corporations with at least five percent foreign ownership.⁵³ The countries whose citizens are chiefly involved, accounting for seventy-two percent of all foreign-held land, are Canada—holding about twenty percent—and Western European nations such as the United Kingdom, Luxembourg, and West Germany.⁵⁴ Approximately twenty-five percent of foreign-held land is in Georgia, South Carolina, and Tennessee;⁵⁵ the first two states have a long tradition of foreign investment. In Illinois,⁵⁶ approximately 29,000 acres are reported held by foreigners about one-tenth of one percent of the privately-held agricultural land in that state.⁵⁷

⁴⁹ 44 Fed. Reg. 29,031-33 (1979) (to be codified in 7 C.F.R. §§ 781.1-4).

⁵⁰ Agricultural Foreign Investment Disclosure Act of 1978, Pub. L. No. 95-460, § 9(1), 92 Stat. 1266 (1978) (to be codified at 7 U.S.C. § 3508(1)).

⁵¹ U.S. DEP'T OF AGRICULTURE, AGRICULTURAL ECONOMIC REPORT NO. 447, FOREIGN OWNERSHIP OF U.S. AGRICULTURAL LAND, at i (1980).

⁵² Total foreign ownership of U.S. agricultural land, as of October 31, 1979, was reported to be 5.2 million acres. *Id.* at iii.

⁵³ *Id.* at iii, 11.

⁵⁴ *Id.* at iii, 10.

⁵⁵ *Id.* at iii, 4.

⁵⁶ Not to be outdone, Illinois has passed its own Agricultural Foreign Investment Disclosure Act. Agricultural Foreign Investment Disclosure Act, Pub. Act 81-187, §§ 1-8, 1979 Ill. Legis. Serv. 307 (to be codified at ILL. REV. STAT. ch. 5, §§ 601-08). Although it very closely parallels the federal statute, one difference is its exemption of agricultural land that is used primarily to meet pollution control laws or regulations. *Id.* at § 2(1), 1979 Ill. Legis. Serv. 307 (to be codified at ILL. REV. STAT. ch. 5, § 602(1)). Also, it exempts leasehold interests of less than five years, rather than the ten-year limit provided in the federal act. *Id.* at § 3(a), 1979 Ill. Legis. Serv. 308 (to be codified at ILL. REV. STAT. ch. 5, § 603(a)).

⁵⁷ The first 3784 correctly completed AFIDA reports accounted for over 2.9 million acres; the state totals are as follows:

It should be noted, however, that informal inquiry suggests that Agriculture Department figures disagree significantly with those generated by the Department of Commerce questionnaires. No firm conclusions should be reached until both studies are issued in final form.

CONCLUSION

The foregoing analysis of existing federal and state laws restricting or prohibiting, or requiring disclosure of, alien land ownership might appear innocuous and only of marginal interest, even to aliens. At present, the traps are mainly for the unwary, and the inconveniences are endurable. Several points of considerable impact, however, should be noted:

Alien Identification. It will be increasingly difficult for the fact of foreign ownership to be disguised by tiers of legal entities. Assuming accurate reporting—since willful failure to report could be extremely expensive—the scope of foreign ownership of agricultural land, at least in the United States, will no longer be a mystery shrouded by inscrutable land trust numbers in the dusty files of county recorders. A reliable data base will be established.

State	Acres	State	Acres
Alabama	162,430	Nebraska	26,807
Alaska	337	Nevada	130,266
Arizona	71,558	New Hampshire	30,040
Arkansas	20,734	New Jersey	7,416
California	109,498	New Mexico	169,838
Colorado	132,137	New York	122,064
Connecticut	220	North Carolina	75,986
Delaware	837	North Dakota	11,805
Florida	122,671	Ohio	4,847
Georgia	223,412	Oklahoma	2,982
Hawaii	14,287	Oregon	166,168
Idaho	6,534	Pennsylvania	95,565
Illinois	29,477	Rhode Island	0
Indiana	5,335	South Carolina	220,125
Iowa	12,699	South Dakota	14,084
Kansas	22,496	Tennessee	285,775
Kentucky	7,956	Texas	161,951
Louisiana	17,032	Utah	8,131
Maine	18,934	Vermont	24,167
Maryland	10,285	Virginia	37,327
Massachusetts	5	Washington	35,327
Michigan	5,489	West Virginia	2,599
Minnesota	16,101	Wisconsin	9,853
Mississippi	77,704	Wyoming	1,800
Missouri	18,891	Puerto Rico	386
Montana	147,630		
		TOTAL	2,899,998

Constitutionality. If, as it is feared, there is substantial unregulated foreign investment in United States agricultural property, there will be a firmer constitutional basis upon which to enact additional restrictive legislation. There is a public interest in maintaining the family farm, and, furthermore, the agricultural sector could benefit from the collection of objective, reliable data on foreign ownership. Other imperative public interests could be identified which could give restrictive legislation a more compelling rationale. This becomes quite significant when the constitutionality of legislation which adversely affects the "suspect" category of aliens is questioned. It is difficult to imagine a court rejecting a credible threat perceived by Congress to U.S. control over its own food supply.

Further Restrictions. The impetus for the legislation has come from the federal government, and has been picked up by the states. This may be seen as only a first step toward comprehensive land ownership restrictions applied to aliens, in urban as well as agricultural settings. With federal support, the states may feel more secure in establishing tighter limitations on alien ownership.

Home Country Considerations. Aliens may well prefer to keep their home governments in the dark about the extent and nature of their investments in U.S. real estate. It is easy to understand why an alien would prefer to keep such information confidential. To the extent that anonymity is eliminated by U.S. disclosure laws, these aliens will face an additional, practical barrier to land ownership.

The purpose of this discussion is not to suggest all possible exposures. It is merely to warn that hazards exist and that a substantial new risk to foreign land holdings has been introduced by virtue of the new disclosure acts. A counseling lawyer should have these risks firmly in mind when the topic of real estate arises.