LEGAL UPDATES

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Texas Proposes Rules Governing Foreign Ownership of Real Property Under SB 17: What Facilitating Entities Must Know Now

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The Texas Office of the Attorney General (OAG) recently proposed Chapter 67 of the Texas Administrative Code, containing rules with direct consequences for parties active in Texas real property transactions. The proposed rules provide the first formal framework for how the OAG will define key terms, receive complaints, conduct investigations, and coordinate with state and federal agencies in enforcing the foreign ownership restrictions on Texas real property set forth in Texas Senate Bill 17 (SB 17) (now codified as Subchapter H, Chapter 5, Texas Property Code).[i]

Among the most consequential developments in Chapter 67 is the mandatory reporting obligation imposed on "facilitating entities," a category broad enough to cover the full range of professionals typically involved in closing a Texas real property transaction. Proposed Section 67.4 creates a mandatory reporting duty for facilitating entities, allows any person to submit a complaint, authorizes a standardized complaint form, and permits the OAG to refer any facilitating entity that fails to submit a required complaint to the appropriate licensing or professional disciplinary authority. This update focuses on what those obligations mean in practice.

Background

On September 1, 2025, SB 17 became effective, following its passage during the 89th Regular Legislative Session of Texas. The bill imposes civil and criminal penalties against foreign entities and individuals who purchase or control real estate interests in the state and are listed in the Annual Threat Assessment Reports prepared by the Director of National Intelligence[ii], with the list

subject to expansion by the Texas Governor. As noted in our October 2025 client alert on SB 17[iii], at the time of SB 17's enactment, the Texas Attorney General had not yet issued any rules governing its investigatory processes under this new law. Chapter 67 now works towards filling that gap.

Chapter 67 applies only to transactions occurring on or after September 1, 2025, matching the effective date of SB 17 and confirming that the OAG does not intend to apply the rules retroactively to transactions that closed earlier.

New Definitions

The proposed rules provide several definitions which are particularly important in practice.

Control

This expanded definition provides further guidance on when an entity may be said to be controlled by a person or entity from a designated country. The proposed rules define "control" as:

The direct or indirect power to direct an entity's management or policies; or

The acquisition or disposition of an interest in Texas real property by an entity, whether through ownership, contract, office, position, or otherwise. Certain persons are automatically deemed to control an entity, including:

A general partner;

A managing member;

A shareholder or stockholder holding ten percent or more of voting interests;

Any executive officer; and

Any person with the present or future right to acquire or dispose of an interest in Texas real property through the entity.

This is an expansive standard, with the 10% threshold much lower than the majority ownership or 25% benchmarks used in comparable federal frameworks.[iv] [v]

Interest in Real Property in This State

Chapter 67 incorporates the statutory definition in §5.251(6) of the Texas Property Code[vi] and confirms that the term does not include a leasehold interest lasting less than one year. But the rules also make an important expansion. They expressly include a series of licenses, leases, or other arrangements that, in substance, create a leasehold interest in Texas real property for one year or longer, even if they are structured as successive short-term agreements. This anti-avoidance provision is intended to prevent parties from bypassing the statute through rolling short-term arrangements.

Purchase or Otherwise Acquire

Beyond direct purchases or acquisitions, the rule extends this term to:

Any transaction or series of transactions by which a person or entity obtains control of an entity that owns an interest in Texas real property, including a redemption or repurchase of the entity's outstanding interests, regardless of whether the entity acquired the real property before September 1, 2025; and

A series of licenses, leases, or other arrangements that, in substance, create a leasehold interest in Texas real property for one year or longer, even if structured as successive short-term agreements.

One especially notable point is the reference to property acquired before September 1, 2025. A foreign person or entity that acquires control of a domestic entity that already owns Texas real property after that date may still trigger a violation, even though the underlying property was acquired before SB 17 took effect.

Who is a Facilitating Entity?

The threshold question for any firm or professional involved in Texas real property transactions is whether they qualify as a "facilitating entity" under the proposed rules.

A "facilitating entity" is defined as a person or entity that, in the regular course of business, assists with, brokers, insures, finances, values, or processes a purchase or acquisition of an interest in Texas real property. The term includes, but is not limited to, mortgage lenders, title insurance companies, property insurers, appraisers, and licensed real estate professionals. This definition matters in practice because facilitating entities have affirmative reporting duties under Section 67.4.

Notably, the proposed rules do not limit the reporting obligation to facilitating entities that are directly involved in the specific transaction that violates SB 17. As a result, any facilitating entity doing business in Texas that becomes aware of a potentially violating transaction may be required to submit a complaint to the OAG, even if the entity had no role in the transaction.

The New Mandatory Reporting Requirements

What Is Required

A facilitating entity that knows or should know, after reasonable due diligence, that a purchase or acquisition of an interest in Texas real property violates SB 17 must submit a complaint to the OAG. Although any person, not just a facilitating entity, may submit a complaint under this section, this creates meaningful due diligence obligations for professionals involved in real property transactions.

How Complaints Must Be Submitted

Complaints must be submitted electronically through the OAG's online complaint portal or by mail to the address the OAG designates, and the OAG may require a standardized complaint form to promote consistency. That address has not yet been specified, and there is no specific online complaint portal as of the date of this writing. Facilitating entities should monitor the OAG's website closely for these details once the rules are formally adopted.

Post-Closing Transfers and Assignments

The reporting duty is not limited to what a facilitating entity knows at the time of closing. The reporting duty also reaches transactions structured as post-closing transfers or assignments to affiliates, parents, subsidiaries, or entities under common ownership or control when those arrangements are used to effect or conceal a prohibited acquisition. This provision shows that the OAG intends to look through arrangements designed to obscure a prohibited acquisition after closing.

Consequences of Non-Compliance

If the OAG determines that a facilitating entity knew, or should have known after reasonable due diligence, of a violation but failed to file a complaint, it may refer the matter to the appropriate licensing or professional disciplinary authority. That creates a real licensing risk for real estate professionals and other service providers who fail to exercise adequate diligence.

Key Limit: "Reasonable Due Diligence" is Undefined

One of the most significant gaps in Chapter 67 is the absence of any definition or minimum standard for the "reasonable due diligence" that triggers a facilitating entity's reporting duty. A facilitating entity that knows, or should know after reasonable due diligence, that a purchase or acquisition violates SB 17 must submit a complaint to the OAG, but the proposed rules do not define what that diligence must include. The rules do not create a checklist or outline a minimum set of steps constituting diligence. If the OAG determines that a facilitating entity knew, or should have known, of a violation but failed to file a complaint, it may refer the matter to the appropriate licensing or professional disciplinary authority.

For facilitating entities, the absence of a defined standard for reasonable due diligence creates a real licensing risk with no clear way to avoid it until the OAG provides further guidance. Additionally, the expanded definitions provided in Chapter 67 cover a wide array of prohibited entities and types of transactions. Thus, until further guidance is provided, professionals should document their diligence process carefully and err on the side of inquiry when a transaction presents any foreign nexus.

The OAG Enforcement Unit and Interagency Coordination

The Enforcement Unit

Proposed Section 67.3 requires the OAG to maintain a designated enforcement unit that will receive, review, investigate, and enforce compliance with SB 17.

The designated unit would serve four primary functions: (1) receiving written or electronic complaints alleging violations of SB 17; (2) issuing guidance and responding to written inquiries about whether SB 17 applies to specific transactions; (3) coordinating with affected state agencies and political subdivisions; and (4) referring violations to the appropriate licensing or regulatory body.

The creation of a centralized enforcement unit with a formal guidance function is important for practitioners. Parties considering transactions with any potential foreign nexus now have a defined channel for seeking written guidance on whether a transaction falls within the scope of SB 17. That kind of formal process did not previously exist. Even so, that guidance comes with an important caveat.

OAG Guidance is Not Binding

The OAG's enforcement unit will issue guidance and respond to written inquiries about whether SB 17 applies to specific transactions. However, the rules do not (1) state whether OAG guidance is binding; (2) provide a no-action mechanism that would shield a requesting party from later enforcement; (3) commit the OAG to any response timeline; or (4) provide an appeal process if the guidance is unfavorable. A favorable guidance letter may help show a good-faith effort, but it is not immunity from enforcement.

Interagency Coordination

Proposed Section 67.6 directs the OAG to consult, as needed, with the Texas Secretary of State, the Texas Real Estate Commission, the Texas Department of Insurance, and other relevant regulatory state agencies to promote consistent implementation and enforcement of SB 17. The provision is procedural, but it supports coordinated use of the powers those agencies already have and signals that enforcement will not operate in isolation. Including the Texas Real Estate Commission and the Texas Department of Insurance in the interagency coordination reinforces the obligations placed on licensed professionals under Section 67.4, because agencies with licensing authority over those professionals are expressly part of the coordination framework. In practice, an OAG referral for failure to report a known violation could go directly to the body with authority to sanction the professional.

Confidentiality of Records

All complaints, civil investigative demands, interrogatories, and requests for information issued by the OAG, and all responses, records, and other information submitted or generated in connection

with such requests under Chapter 67, are confidential and not subject to public disclosure, except as required by law. Confidential records may be disclosed only: (1) pursuant to a court order; (2) to the Texas Secretary of State or other state agency identified in Subchapter H; (3) to federal agencies, as necessary to enforce Subchapter H or to promote the objectives of SB 17; or (4) as otherwise authorized by law.

The confidentiality protections in §67.7 are an important procedural safeguard for parties that become the subject of a complaint or investigation. However, the carveout allowing disclosure to federal agencies to promote the objectives of SB 17 is broad and could permit information sharing with agencies such as CFIUS, FinCEN, or federal law enforcement without a court order. Once records are in the hands of a federal agency, they may become subject to the federal Freedom of Information Act (FOIA), and the "as otherwise authorized by law" carveout in §67.7(b)(4) could be read to encompass FOIA or other public records statutes as laws that authorize disclosure. Although the proposed rules require receiving agencies to maintain confidentiality "to the extent authorized by law," that obligation is limited by the receiving agency's own legal framework and does not guarantee that FOIA exemptions will apply. As such, although entities who are the subject of an investigation under SB 17 are generally protected by this confidentiality rule at the state level, they should be aware that records shared with federal agencies may be subject to public disclosure under federal law.

Examples

The following scenarios illustrate how the facilitating entity reporting obligation under §67.4 applies in practice. Because the proposed rules have not yet been finally adopted, the analyses below are subject to change and are offered for illustrative purposes only.

1. Individual Purchase from a Designated Country

Scenario: An individual domiciled in North Korea purchases a tract of land in Texas.

Analysis: This transaction violates Texas SB 17. While the purchase itself is not automatically void, the property is subject to an in rem proceeding. The property will be divested and transferred to a receiver, and the individual may face civil and criminal penalties. Additionally, any facilitating entity who knows or should have known, after reasonable due diligence, that the purchase violates Texas SB 17 is required to submit a complaint to the OAG.

2. Foreign-Owned Entity Acquires a U.S. Company

Scenario: A U.S.-owned and -based LLC has an interest in real property in Texas and is acquired by a Chinese company.

Analysis: Under the proposed rules, this would violate SB 17, regardless of when the U.S. LLC purchased its real property interest. This transaction would be subject to investigation by the OAG and to the penalties described in Texas SB 17, and any facilitating entity who knows or should have known of the violation, after reasonable due diligence, would have a duty to file a complaint with the OAG and be subject to discipline by the appropriate licensing authority and/or penalties for failure to do so.

3. Real Estate Agent Learns Their Transaction Violates Texas SB 17

Scenario: A joint venture LLC with 65% ownership by a Chinese corporation and 35% by a domestic LLC purchases real property in Texas. The real estate agent later learns of the LLC's ownership structure.

Analysis: The proposed rules require the real estate agent to submit a complaint to the OAG, either electronically through the OAG's online complaint portal or by mail to the designated address. Failure to do so may result in the OAG referring the agent to the Texas Real Estate Commission for disciplinary action. This scenario illustrates the breadth of the obligation under the proposed rules: the reporting duty is triggered by knowledge, not by involvement in the closing itself.

4. Post-Closing Transfer to a Foreign Affiliate

Scenario: A domestic LLC closes on a Texas commercial property with a U.S.-based title company and mortgage lender. Shortly after closing, the LLC transfers the property to a parent entity headquartered in a designated country.

Analysis: Under proposed Section 67.4, the reporting duty reaches transactions structured as post-closing transfers or assignments to affiliates, parents, subsidiaries, or entities under common ownership or control when those arrangements are used to conceal a prohibited acquisition. The title company and mortgage lender who facilitated the original acquisition may have an obligation to report if they knew or should have known, after reasonable due diligence, that the post-closing transfer effected a prohibited acquisition.

5. Mortgage Lender Learns of Texas SB 17 Violation

Scenario: A mortgage lender is speaking with a representative of an LLC owned by an Iranian corporation. The representative mentions that the LLC just acquired an interest in Texas real property in January 2026. The mortgage lender was not involved in that transaction in any way.

Analysis: The mortgage lender may be required to file a complaint with the OAG. The proposed rules do not contain limiting language which would apply the reporting requirement solely to facilitating entities involved in a transaction which violates Texas SB 17. Even though the mortgage lender was

not involved in the transaction in question, they may still be required to report it as they now know of the violation. If the mortgage lender does not report the transaction, they may be subject to referral to the appropriate licensing authority.

What this means to you

The proposed rules under Chapter 67 materially change the compliance landscape for every professional involved in Texas real property transactions. Some key action items are:

Audit your diligence procedures. The rules do not define what kinds of inquiry constitutes "reasonable due diligence". Until the OAG provides further guidance, or the rules are interpreted by a Texas court, real estate professionals should develop and document a consistent inquiry process for transactions with any potential foreign nexus. This process should be applied at the outset of each engagement, not just at closing.

Train your professionals. The proposed rules do not limit the reporting obligation to facilitating entities directly involved in a violating transaction. Every professional in your organization who touches a Texas real property transaction should understand the reporting obligation and know how to escalate a concern.

Monitor post-closing activity. The reporting duty reaches post-closing transfers or assignments to affiliates, parents, subsidiaries, or entities under common ownership or control when those arrangements are used to effect or conceal a prohibited acquisition. Engagement terms should address how post-closing restructurings will be handled.

Apply the 10% control threshold. Chapter 67 treats any shareholder or stockholder with 10% or more of voting interests as controlling an entity for purposes of SB 17, which is far lower than the 25% threshold used under the Corporate Transparency Act and the majority ownership benchmarks common in commercial practice. For REITs, joint ventures, and multi-investor structures, even a relatively modest foreign investor stake from a designated country may be enough to trigger the statute. Clients should not assume that minority positions are safe.

Do not rely solely on OAG guidance letters. Chapter 67 does not say whether OAG guidance is binding or whether it protects the requesting party in a later enforcement action. A favorable guidance letter may help show a good-faith effort, but it is not immunity from enforcement.

Account for federal information-sharing. Complaints, investigative demands, and responses are confidential but may be disclosed to federal agencies as necessary to enforce Subchapter H or promote the objectives of SB 17. That carveout requires no court order and no particularized showing. Information produced to the OAG in response to a civil investigative demand could be shared with CFIUS, FinCEN, or federal law enforcement without advance notice to the subject of the investigation. Moreover, the "as otherwise authorized by law" carveout in §67.7(b)(4) may expose those records to public disclosure through a FOIA request—a risk that the proposed rules' confidentiality protections do not fully address. Clients responding to OAG inquiries should account for that possibility from the outset.

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[i] Tex. Prop. Code Ann. §§ 5.251–.259 (West).

[ii] The Director of National Intelligence serves as the cabinet-level head of the United States Intelligence Community. The position acts as the principal intelligence advisor to the President, the National Security Council, and the Homeland Security Council and is appointed by the President on advice and consent of the United States Senate. See https://www.dni.gov/index.php/who-we-are.

[iii] Husch Blackwell, New Texas Law Raises Diligence Stakes on Real Property Transactions Involving Foreign Entities (Oct. 28, 2025).

[iv] CFIUS defines “control” as: “The power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following matters, or any other similarly important matters affecting an entity: (1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business; (2) The reorganization, merger, or dissolution of the entity; (3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity; (4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity; (5) The selection of new business lines or ventures that the entity will pursue; (6) The entry into, termination, or non-fulfillment by the entity of significant contracts; (7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity; (8) The appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner; (9) The appointment or

dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or (10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described above." 31 C.F.R. § 800.208.

[v] Under the Corporate Transparency Act, as enforced by FinCEN, a "beneficial owner" of a reporting company is any individual who, directly or indirectly: (1) exercises "substantial control" over the reporting company; or (2) owns or controls at least 25% of the ownership interests of the reporting company. "Substantial control" is defined broadly by FinCEN and includes any individual who: (a) serves as a senior officer (such as President, CEO, CFO, COO, General Counsel, or similar function); (b) has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); (c) is an important decision-maker, meaning someone who can direct, determine, or substantially influence important decisions of the company (such as business scope, major contracts, or financial decisions); and/or (d) has any other form of substantial control over the reporting company, even if not covered by the above categories. 31 C.F.R. § 1010.380(d)(1).

[vi] § 5.251(6) defines "real property" to include: "(A) agricultural land; (B) an improvement located on agricultural land; (C) commercial property; (D) industrial property; (E) groundwater; (F) residential property; (G) a mine or quarry; (H) a mineral in place; (I) standing timber; or (J) water rights." Tex. Prop. Code Ann. § 5.251(6) (West).