

Foreign Investment in Real Estate: California

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A Q&A guide to foreign investment in commercial real estate in California. 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 for out-of-state companies to acquire California real property.

Out-of-state companies doing business in California must:

- Register with the [California secretary of state](#) (Cal. Corp. Code §§ 2105(a), 15909.02(a), 16959(a)(1), and 17708.02(a); see [California Secretary of State: Forms, Samples, and Fees](#)).
- Pay the appropriate registration fee (Cal. Gov't Code §§ 12186(e), (f), 12188(c), 12189(b), and 12190(c); see [California Secretary of State: Business Entities Fee Schedule](#)).
- Register with the [California Franchise Tax Board](#).

Among other factors, a company is doing business in California if its real and tangible personal property exceed either:

- The threshold amount the state sets annually.
- 25% of the entity's total property.

(Cal. Rev. & Tax. Code § 23101(b)(2); see [California Franchise Tax Board: Doing Business in California](#).)

The California Corporation Code provides a non-exhaustive list of activities that are not considered a foreign corporation doing business, including:

- Maintaining, defending, or settling any action, suit, administrative or arbitration proceeding, or dispute.
- Holding meetings of the board of directors or shareholders.
- Carrying on activities concerning the company's internal affairs.
- Maintaining bank accounts.
- Maintaining offices or agencies for the transfer, exchange, and registration of securities or depositaries with relation to the company's securities.
- Sales from independent contractors.
- Soliciting or procuring orders by mail or from employees, agents, or otherwise, where the orders require acceptance outside California before becoming binding contracts.
- Creating evidence of debt or mortgages, liens, or security interests on real or personal property.
- Conducting an isolated transaction:
 - completed within a period of 180 days; and
 - not in the course of many repeated transactions of a like nature.



- Status as any of the following:
 - a shareholder of a California corporation;
 - a shareholder of a foreign corporation transacting intrastate business;
 - a limited partner of a California limited partnership;
 - a limited partner of a foreign limited partnership transacting intrastate business;
 - a member or manager of a California limited liability company; or
 - a member or manager of a foreign limited liability company transacting intrastate business.

(Cal. Corp. Code § 191(b), (c).)

Similar activities are not considered doing business for a foreign:

- Limited liability company (Cal. Corp. Code § 17708.03(b), (c)).
- Limited partnership (Cal. Corp. Code § 15901.02(ai)(2), (3)).
- Limited liability partnership (Cal. Corp. Code § 16959(m), (n)).

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

California does not impose any special restrictions on out-of-state domestic investors purchasing real property or interests in entities that own California real property.

3. Describe reporting requirements which relate solely to out-of-state domestic (direct and indirect) owners of real property, in relation to:

- Acquisition.
- Ownership.
- Disposition.

There are no reporting requirements that relate solely to out-of-state domestic owners acquiring, owning, or disposing of California real property.

Acquisition

Similar to in-state owners, out-of-state owners must:

- File applicable local, county, and state real estate transfer declarations, such as a grant deed, quit claim deed, or similar declaration. Only original signatures are accepted.
- Complete a [Preliminary Change of Ownership Report](#).
- Pay applicable local, county, and state transfer taxes and fees (see [Practice Note, Real Estate Transfer Taxes \(CA\)](#) and [State Q&A, Real Estate Ownership: Question 10](#)).

Ownership

Similar to in-state owners, out-of-state owners must report and pay tax on income derived from California real property and pay property taxes. The annual increase in the base year value of real property for property tax purposes may only increase by up to 2%, except when the property either:

- Changes ownership.
- Undergoes new construction.

(Cal. Rev. & Tax. Code §§ 51(a)(1)(D) and 110.1(a); Cal. Code Regs. Tit. 18 § 460(b).)

Disposition

Similar to in state companies, out-of-state companies selling real property must report and pay taxes on their gains from sales of California real property.

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

Seller's Obligations

In any disposition of California real property by a non-California resident, the seller, or more likely the escrow agent, must withhold state income taxes on the proceeds (Cal. Rev. & Tax. Code § 18662(e)). While generally 3.33% is withheld, full or partial exemptions may apply.

The seller must file a [Real Estate Withholding Statement \(Form 593\)](#) to determine if full, partial, or no withholding is required. The filing requirement exists even for tax-deferred transactions. (See [California Franchise Tax Board Publication 1016](#).)

Purchaser's Obligations

If the purchaser does not receive a Form 593 or a version of it, exempting the seller from its withholding obligation, the purchaser must:

- Complete Form 593.
- Withhold the necessary amount.
- Report and remit the withholding.

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?

California levies no taxes solely for out-of-state domestic individuals or entities acquiring or transferring either:

- Real property.
- Ownership interests in entities that own real property.

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

In California, out-of-state investors are not required to invest with a local partner and there is no advantage in doing so.

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 in California typically use either:

- A limited partnership, with a limited liability company as the general partner.
- A limited liability company directly.

Corporations are not normally used because of income tax considerations.

Foreign (Non-US) Company Investor

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

Foreign companies do not require state permission to acquire California real property. However, foreign companies doing business in California do face some requirements (see Question 1).

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

California does not impose any special restrictions on foreign investors purchasing either:

- Real property.
- Interests in entities owning California real property.

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

- Acquisition.
- Ownership.
- Disposition.

There are no reporting requirements that relate solely to foreign owners acquiring, owning, or disposing of California real property.

Acquisition

Foreign owners of real property are subject to the same reporting requirements as out of state domestic investors (see Question 3: Acquisition).

Ownership

Foreign owners are subject to the same reporting requirements as out of state domestic investors (see Question 3: Ownership).

Disposition

Foreign owners are subject to the same reporting requirements as out of state domestic investors (see Question 3: Disposition).

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

Seller's Obligations

The seller's tax obligations are the same in California for the transfer of foreign-owned real property as out-of-state domestic-owned real property (see Question 4: Seller's Obligations).

Purchaser's Obligations

The purchaser's tax obligations are the same for the transfer of foreign-owned real property as out-of-state domestic-owned real property (see Question 4: Purchaser's Obligations).

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?

California levies no taxes solely on foreign individuals or entities acquiring or transferring real property or ownership interests in entities owning real property.

Foreign individuals and entities are subject to the same taxes that apply to residents (see Question 5). California taxes an entity on its worldwide income by default unless it elects otherwise.

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

In California, foreign investors are not required to invest with a local partner and there is no advantage in doing so.

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

In California, foreign investors usually use the same investment vehicles as out-of-state domestic investors (see Question 7).

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