

*Original Paper*

# The US Regulations on Foreign Ownership of Land-Practical and Theoretical Perspectives

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## **Abstract**

*This article examines the US regulations on Foreign Ownership of land from practical and theoretical perspectives. It focuses on the broad theme of political, economic, human rights and national security factors that affect the property rights of foreigners in the US. It aims to address the underlying theoretical issues by examining whether these social forces provide a satisfactory jurisdiction for the host state's management of land ownership; and pursues an assessment of the current pattern of treatment towards further modification or improvement, against the background of the new established criteria.*

## **Keywords**

*US foreign ownership of land, political forces, economic forces, human rights forces, national security forces*

## **1. Introduction**

This article examines US domestic policies on alien land ownership. In particular, it examines the deeper establishing and social forces shaping foreign real estate investment, namely the political, economic, human rights and national security factors that affect the property rights of foreigners in the US. It first examines the legal framework governing alien land ownership within the regime of both federal and state legislation. The depiction of such a framework matters not only because of its indispensable role in supporting further analysis in this study, but also because of its significance in advancing research by other scholars, as it gathers all the primary statutes that are issued recently and thus developed a comprehensive legal framework in this area. Then the historical and political forces that shaped US alien land regulations will be addressed. After that, the following section focuses on the economic perspective, looking at the effectiveness of alien land law in facilitating foreign trade. Next, the human rights and national security rights justifications for the laws are addressed. Finally, it

concludes.

## **2. Existing State and Federal Legislations on Alien Land Ownership**

### *2.1 Federal Legislations*

Federal regulations expressly state that aliens shall not acquire any land in the territories of the US except under rules that provide otherwise (Note 1). In particular, federal laws tend to exclude aliens from acquiring public land and having any interest therein (Note 2). However, a wide range of exceptions exist to modify the effect of the restrictions. Firstly, the restrictions do not apply to aliens who have declared the intention to become a citizen of the US or who are going to become bona fide residents of the US (Note 3). Secondly, the restrictions cannot be construed to prevent aliens from acquiring or holding land in an incorporated city, town or village or any mining claim (Note 4). Thirdly, the restrictions do not apply to acquisition by devise, inheritance, by process of law in the collection of debts, as security for indebtedness, by any procedures for the enforcement of a lien or claim thereon, provided that all land so acquired is disposed of within ten years of the acquisition (Note 5). Furthermore, aliens' right to hold and transfer land may also be secured by treaties between the US and foreign countries of which the aliens are citizens or subjects (Note 6). Regardless of the form of acquisition, foreign persons holding interests in agricultural land are required to file with the Secretary of State within ninety days of acquisition (Note 7).

Apart from the federal regulations on the acquisition of immovable property by aliens, the state's regulative power in terms of alien land ownership is exercised directly through control over enemy and hostile aliens and the administration of tax policies.

### *2.2 State Legislation*

State laws present a variety of landholding restrictions which fall into one or more of the following categories: (1) full national treatment of individual aliens; (2) national treatment of individual aliens with certain exceptions; (3) statutory restrictions on land ownership applied to non-resident aliens; (4) statutory restrictions on land ownership applied to all aliens; (5) statutory restrictions on land ownership applied to foreign corporations; and (6) statutory restrictions on land ownership applied to both domestic and foreign corporations.

#### *2.2.1 Full National Treatment of Individual Aliens*

Among the fifty states that make up the US, thirteen provide aliens with full national treatment both in terms of ownership rights and inheritance rights (Note 8). They are Alabama, California, Connecticut, Delaware, Florida, Indiana, Maine, Michigan, Tennessee, Washington, West Virginia, Arizona and Utah (Note 9). By virtue of the common rules under these jurisdictions, aliens are entitled to take by purchase, devise or inheritance and hold, convey, devise or otherwise dispose of land in the same way as citizens.

The principle of national treatment is confined to ownership rights only in six states (Louisiana, Massachusetts, North Dakota, Rhode Island, Kansas and North Carolina) (Note 10). Among them, the new enactments of Louisiana, Massachusetts, North Dakota and Rhode Island expressly state that aliens may take, hold, transmit, and convey real estate as fully as US citizens, while the statutes of North Carolina and Kansas have similar effects by retaining only the restrictions on the inheritance rights of aliens (Note 11). In North Carolina, an alien is required to prove the existence of reciprocal rights in order to acquire land by inheritance (Note 12). Kansas provides that any devise or other such disposition of real estate made from decedents to foreign corporations and their subdivision thereof as beneficiaries or grantees shall be prohibited except for religious, educational or charitable purposes (Note 13).

On the other hand, national treatment is confined to inheritance rights in another ten states; Colorado, Hawaii, Minnesota, New Jersey, Pennsylvania, Virginia, Wisconsin, Ohio, New Mexico and Alaska provide that an alien individual is qualified to take as an heir, even when the individual, or an individual through whom he claims, is an alien (Note 14). In Nebraska and Wyoming, a non-resident may be allowed to take real property by succession or testamentary disposition if the nation in which such alien is a resident or citizen grants reciprocal rights to US citizens (Note 15).

#### 2.2.2 National Treatment of Individual Aliens with Certain Exceptions

Eleven states allow national treatment, generally, but restrict the ownership rights of certain types of aliens, primarily, enemy aliens and aliens who have not declared their intention to become US citizens. The five states that restrict landholding by enemy aliens are Maryland, New Jersey, Georgia, Virginia and Pennsylvania. In another six states (Kentucky, Vermont, California, Idaho, Oregon and Hawaii), statutory restrictions apply to aliens who have not filed a declaration of intention to become a US citizen.

##### 2.2.2.1 Land Ownership Rights of Alien Friends

Friendly aliens are entitled to the same rights to acquire real estate as citizens in Maryland, New Jersey and Georgia (Note 16). Virginia guarantees to grant friendly aliens the same land ownership rights as US citizens, except if the foreign countries in which the aliens are residents deny Virginian residents the same benefits (Note 17). In Pennsylvania, friendly aliens may acquire, hold and transfer real estate in the same way as US citizens as long as it is under five thousand acres (Note 18).

##### 2.2.2.2 Land Ownership Rights of Declarant Aliens

The laws of Kentucky and Vermont permit aliens who declare their intentions to become US citizens (declarant aliens) to acquire and hold land of any sort on the same basis as citizens, while, in California, Idaho and Oregon, such aliens are entitled to full ownership, equivalent to that of US citizens, in so far as the purchase of public land is concerned (Note 19).

California grants declarant aliens the right to acquire oil, gas and mineral leases on public land, unless there is a treaty right or reciprocity provision to the contrary (Note 20). Such aliens are also granted the right to purchase inland lakes, unsegregated swamps and overflowed land, for their own use and benefit,

up to an aggregate area of 640 acres, including all other state land acquired previously (Note 21).

In Nevada and Oregon, declarant aliens, upon the discovery of a vein or lode on public land, may locate the lode and make a mining claim (Note 22). In Hawaii, only citizens and declarant aliens who have resided in the state for a period of more than five years are eligible to acquire or lease a residence lot in the Oahu land development if the residence lot is disposed by the board of land and natural resources (Note 23).

### 2.2.3 Statutory Restrictions on Land Ownership Applied to Non-Resident Aliens

Non-resident aliens are subject to statutory limitations on the acquisition and holding of real property in eighteen states, which, pursuant to the relevant legislation adopted, include restrictions on the acquisition of agricultural land (Iowa, Pennsylvania, South Dakota, Missouri, North Dakota and Minnesota), restrictions on the dimensions of landholding (Wisconsin, Ohio, Mississippi) and also other types of restrictions regarding landholding by non-resident aliens (Arkansas, Michigan, New Hampshire, Wyoming, Oklahoma, Hawaii, Alaska, Kentucky and Texas).

#### 2.2.3.1 Restrictions on the Acquisition of Agricultural Land by Non-Resident Aliens

Aliens in Iowa may, in general terms, enjoy the same rights in respect to the possession, conveyance and descent of real property as US citizens. The only departure from the principle of national treatment is the restrictive provisions concerning agricultural landholding by non-resident aliens (Note 24). Non-resident aliens are not allowed to acquire agricultural land unless it is by devise or descent, by judicial process, or otherwise if it is to be used for non-farming purposes and has an acreage not exceeding 320 acres (Note 25). Agricultural land so acquired must be disposed of within a certain period of time, which may vary due to the nature of its acquisition. For land acquired through devise or descent this is two years (Note 26); land acquired by judicial process within two years after the title is transferred (Note 27); and for land acquired for non-farming uses, the period is five years (Note 28). Non-resident aliens who acquire agricultural land for non-farming uses or who own interests in agricultural land must also file a report with the Secretary of State (Note 29).

Non-resident aliens in Pennsylvania are not allowed to hold more than 100 acres for agricultural use, except such as may be acquired by devise or inheritance, or such as may be held as security for indebtedness or otherwise, as may be secured by treaty (Note 30). South Dakota follows the same rules, both in terms of general agricultural holding restrictions and specific exception provisions, except that its maximum acreage holding is 160 acres (Note 31).

In Missouri, bona fide residents have the right to acquire and hold agricultural land, which must be divested of within a certain period of time after the cessation of their residence (Note 32). Foreign persons in Missouri who do not qualify as bona fide residents are prohibited from acquiring agricultural land, except for non-farming purposes (Note 33). Land or any interests therein acquired must be filed with the Department of Agriculture unless it is a security interest or an interest for the exploration and production of natural resources (Note 34).

The law of North Dakota contains the general rule of non-discrimination for anyone who is a US citizen, Canadian citizen or a permanent resident alien of the US regarding any vested interest in agricultural land, and also extends national treatment to other alien individuals, if such rights are acquired by devise, inheritance, as security for indebtedness, by judicial process or are otherwise secured by any sort of treaty (Note 35). Minnesota provides similar provisions by allowing aliens qualifying as permanent residents to acquire agricultural land, along with other groups of aliens, such as treaty aliens, alien heirs or devisees, those taking land by judicial process or those pursuing non-farming operations (Note 36). An additional filing requirement is imposed on permanent residents upon the acquisition of the agricultural land (Note 37).

#### 2.2.3.2 Restrictions on the Dimensions of Landholding by Non-Resident Aliens

Wisconsin places on non-resident land acquirers a limitation of 640 acres and an additional obligation to file with the state (Note 38). However, aliens may acquire land in excess of such acreage under certain exceptional circumstances, for purposes of natural resource exploration or for manufacturing or business establishment (Note 39). The exemption rules are also applicable to land acquired by devise, inheritance or in the collection of debts (Note 40).

Non-resident aliens in Ohio may not acquire land in excess of three acres or with a market value of more than one hundred thousand dollars, the acquisition of which must be filed with the Secretary of State (Note 41).

Resident aliens in Mississippi may be granted the same land ownership as US citizens. Non-resident aliens, on the other hand, may acquire land of no more than 320 acres for industrial development or no more than five acres for residential purposes (Note 42). The acreage limitation does not apply if non-resident aliens acquire land as security for indebtedness or for the enforcement of a debt payment (Note 43). It also provides a specific exception to allow citizens of Syria or the Lebanese Republic to inherit property from citizens or residents of the state of Mississippi (Note 44).

#### 2.2.3.3 Other Restrictions Regarding Landholding by Non-Resident Aliens

Arkansas, Michigan, New Hampshire and Wyoming guarantee that no distinction shall be made by law between resident aliens and citizens in regard to the possession, enjoyment, conveyance or descent of property while Colorado grants such privileges to bona fide residents only (Note 45). In Hawaii, only citizens and aliens who have resided in the state for more than five years qualify to hold a residential lease on public land if the land falls into the type that may be leased without public auction (Note 46). A three-year residency qualifies in the case of the acquisition of such public land for agricultural use (Note 47). The legislation of Hawaii also provides that bona fide residents of the state shall be eligible for the purchase of a residential houselot within a development tract (Note 48). Oklahoma does not allow aliens to acquire land in the state, except for native-born Indian aliens, bona fide residents of the state, the current alien holders of such land, or those taking land by devise or descent (Note 49). In the case of Alaska, there is a disclosure requirement for the transfer of real estate interests to non-resident aliens (Note 50). Kentucky entitles resident aliens to take and hold any land for the purposes of

residence, trade or business (Note 51). Non-resident aliens, meanwhile, have eight years to dispose of holdings on land, after which time they will be escheated to the state (Note 52). In Texas, land acquired by a non-resident alien or by a foreign government may not qualify for appraisal as timber land, if registration is required for such acquisition (Note 53).

#### 2.2.4 Statutory Restrictions on Land Ownership Applied to All Aliens

Nine states employ a more restrictive technique by subjecting all aliens, regardless of their residency status in the US, to statutory limitations. Among them, Arkansas and Missouri inhibit landholding by aliens for agricultural purposes, while the laws of Louisiana, Alaska, Montana and New York contain measures preventing aliens from acquiring any interests in public land. Other forms of restrictions are seen in the jurisdiction of Nebraska, Georgia and South Carolina.

##### 2.2.4.1 Restrictions on the Acquisition of Agricultural Land by All Aliens

Aliens in Arkansas are allowed to acquire interests in any type of real estate, except agricultural land, in the same manner as US citizens (Note 54). However, a foreign party may take a valid title to the agricultural land through the enforcement of the lien or other process of law and any agricultural interest acquired thereof must be filed in the office of the circuit clerk (Note 55). A reporting obligation is required in Illinois for any foreign person who acquires or transfers an interest in agricultural land in the state, subject to the exception of leaseholds of ten years or less and security interests (Note 56). Missouri follows exactly the same rules as Illinois in regulating agricultural land ownership by foreign persons (Note 57).

##### 2.2.4.2 Restrictions on the Acquisition of Public Land by All Aliens

Louisiana imposes acreage limits on the leasing of public land for both nationals and aliens (Note 58). Many states are also keen to control natural resources discovered in or upon public land. New York provides that all deposits of gold and silver, as well as deposits of minerals and fossils, discovered within the state, belong to its citizens only (Note 59). Alaska and Montana have reciprocal rules in granting aliens landholding rights in their jurisdictions for the undertaking of coal explorations on public land (Note 60).

##### 2.2.4.3 Other Restrictions Regarding Landholding by All Aliens

Aliens in Nebraska are generally prohibited from acquiring any real estate interests in land except for leasehold interests with durations of less than five years (Note 61). South Carolina limits the purchase of land by aliens to five hundred thousand acres, which does not apply to land acquired through foreclosures of mortgages after March 9, 1986, but in that case aliens must dispose of any excess of land within five years unless holding onto the land is otherwise approved (Note 62). Georgia is the only state that prevents aliens from owning or controlling land located within the boundaries of airports (Note 63).

### 2.2.5 Statutory Restrictions on Land Ownership Applied to Foreign Corporations

Legislation regarding the acquisition of land ownership by foreign corporations can be identified in eighteen jurisdictions. The relevant measures adopted reveal a pattern of geographical concentration with respect to national treatment (Alabama, Nevada, Delaware and Michigan); agricultural landholding (North Dakota, Oklahoma, South Carolina, Iowa and Missouri); public landholding (Mississippi and Montana) and acreage limitations (Wisconsin, South Carolina and Ohio). Other types of measures are also observed in the following jurisdictions: Wisconsin, Louisiana, Florida, Georgia, Nebraska and Texas.

#### 2.2.5.1 National Treatment of Foreign Corporations

Among the statutes that expressly govern landholding by corporations, the enactments of Alabama, Nevada and Delaware allow foreign corporations owning land in these states to exercise all the rights and privileges of ownership granted to domestic corporations (Note 64). Michigan even provides favorable financing rules for foreign corporations, by allowing them to purchase loans secured by the mortgage of real property through the individual person if such loans are insured or guaranteed in whole or in part by the agency of the federal government, without the establishment of the authority in the state for such purpose (Note 65).

#### 2.2.5.2 Restrictions on the Acquisition of Agricultural land by Foreign Corporations

Many states limit or prohibit the acquisition of agricultural land by alien corporations. The legislation of North Dakota and Oklahoma provide that in general terms no foreign corporation may acquire any interest in any title to agricultural land, or engage in farming or ranching, subject to listed exceptions (Note 66). North Dakota allows foreign corporations to acquire agricultural land only if the ultimate beneficial interest in the entity is held by US citizens or permanent resident aliens of the US. However, such a restriction does not apply to agricultural land acquired by devise, inheritance, as security for indebtedness, by process of law or for the enforcement of a lien or claim. The statute further contains a saving clause for foreign corporations acquiring agricultural land for industrial purposes or whose right to hold is secured by treaty (Note 67). In South Carolina, any corporation engaged in agricultural activities is taxed at six percent of its fair market value if it has a non-resident alien as a shareholder, as opposed to the tax of four percent that is applied to other corporations (Note 68).

In Iowa, foreign business is generally prohibited from obtaining agricultural land (Note 69). However such an acquisition may be allowed if (1) it occurred on or after January 1, 1980 (Note 70); (2) the land is no more than 320 acres and acquired for an immediate or pending use other than farming (Note 71); (3) it is made through the operation of law in the collection of debt or for the purpose of undertaking; or (4) it is distributed by devise or decent (Note 72). In addition to this, agricultural land acquired by foreign corporations for non-farming purposes must be converted to such purposes within five years (Note 73). Any rights acquired either by devise, decent or by a process of law must be divested or disposed of within two years of acquiring the rights (Note 74). Foreign corporations which acquire agricultural land for non-farming use or which own an interest in agricultural land must file a report

with the Secretary of State (Note 75). A non-farming purpose also suffices for an acquisition of agricultural land in Missouri (Note 76). However, corporations who acquire, hold or transfer any interests in agricultural land in Missouri may also be subject to the filing requirement, unless they held a security interest in agricultural land on September 28, 1979 or acquired the interest in order to facilitate exploration for natural resources (Note 77).

#### 2.2.5.3 Restrictions on the Acquisition of Public Land by Foreign Corporations

Mississippi provides that no corporation owned in whole or in part by non-resident aliens may acquire public land (Note 78). The legislation of Montana employs a more tactful technique and conditions the rights of foreign-controlled corporations to acquire coal leases on public land upon the existence of reciprocity (Note 79).

#### 2.2.5.4 Restrictions on the Dimensions of Landholding by Foreign Corporations

Ohio, Wisconsin and South Carolina restrict the acreage of land held by foreign corporations (Note 80). In Ohio, a foreign corporation in which a single non-resident alien acquires more than ten percent of the stock, or non-residents aliens in aggregate acquire over forty percent of the stock, must file with the Secretary of State for real estate holdings in excess of three acres or one hundred thousand dollars (Note 81). In the case of Wisconsin, corporations or trusts having more than twenty percent of their stock held by non-resident aliens or foreign corporations may acquire land of up to 640 acres; they must also fulfill the filing requirement (Note 82). South Carolina allows land to be held up to a maximum of five hundred thousand acres by corporations in which aliens have controlling interests (Note 83). However, land purchased to foreclose any mortgage acquired after March 9, 1996 is not subject to such an acreage limitation, as long as any land in excess of five hundred thousand acres is disposed of within five years (Note 84).

#### 2.2.5.5 Other Restrictions Regarding Landholding by Foreign Corporations

Nebraska prohibits aliens from acquiring title to any land or holding any leasehold interests for a period of more than five years (Note 85). It also exempts foreign corporations from acquiring different types of landed property by descent, devise, or purchase except for real estate located within their corporate limits of cities or for manufacturing or industrial establishment (Note 86). Many states require foreign corporations to register their land ownership interests. For example, alien corporations in Florida and Georgia are required to maintain registered offices and registered agents and file with the Department of State notice of the registered offices and the designation of the registered agents (Note 87). In Wisconsin and Louisiana, foreign corporations must undertake filing prior to accessing real property (Note 88). In other states, corporations with substantial foreign interests may find it hard to acquire title to real estate. For example, land acquired in Texas, by a legal entity in which non-resident aliens and/or foreign governments own a majority interest, is not eligible for appraisals as timber land if such an acquisition has to be registered (Note 89). In Wisconsin, domestic corporations and trusts with more than 20% of their stock held by non-resident aliens must file their real estate interest in the same manner as foreign corporations (Note 90). Additionally, in Georgia, businesses with substantial foreign



ownership are not allowed to acquire land located within the boundaries of airports (Note 91).

#### 2.2.6 Statutory Restrictions on Land Ownership Applied to both Domestic and Foreign Corporations

As well as the restrictions applied to foreign corporations, it is worth noting that certain states have adopted legislation to extend the restrictions to all corporations. These states are Nebraska, Missouri, Maine, South Dakota, Kansas, North Dakota, Oklahoma and West Virginia.

##### 2.2.6.1 Restrictions on the Acquisition of Agricultural Land by All Corporations

Nebraska and South Dakota impose a general prohibition on all corporations with respect to real estate used for farming or ranching (Note 92). Maine requires all corporations wishing to hold agricultural land to comply with the reporting requirement, unless the land is owned by family farm corporations or partnerships or is less than ten acres (Note 93).

The legislation of Kansas states that no business entities, except certain specific types of agricultural entities, may be allowed to acquire or obtain an interest in the title to agricultural land (Note 94). However it gives outright exceptions in this regard that, in practice, may circumvent the general rules to a large extent. These include, *inter alia*, agricultural land taken by bona fide encumbrance for the purposes of security; that acquired by business entities in an acreage necessary for non-farming operations; that held by educational, religious or charitable corporations or other corporations for research and experimental purposes; that owned by process of law in the collection of debts or by any procedure for the enforcement of a lien or claim (Note 95). Corporations, both domestic and foreign, seeking to hold agricultural land in Kansas must fulfill an additional reporting requirement, but land of less than ten acres and state-assessed railroad-operating property is excluded from this requirement (Note 96). Missouri has provided similar provisions to those of Kansas, both with respect to the general principle and the listed exceptions (Note 97).

Corporations in North Dakota are generally prohibited “from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching” except as is necessary either for surface coal-mining operations, or for industrial and business purposes, or in the case of certain non-profit organizations who own or lease the land for the purpose of conserving natural areas and habitats, in the land with an dimension of no more than twelve thousand acres (Note 98). Among these exception provisions, corporations engaged in farming or ranching, except for certain organizations performing the fiduciary duties on an estate or trust, must undertake the filing requirement with the Secretary of State (Note 99). Furthermore, corporations not engaged in farming or ranching businesses, but which hold an ownership or lease of more than twenty acres for farming or ranching, must also file a report in this regard with the attorney general (Note 100).

##### 2.2.6.2 Other Restrictions Regarding Landholding by All Corporations

Oklahoma contains a provision entitling all corporations to own, hold, or take any real estate located within an incorporated city or town, and makes a variety of exceptions in terms of land acquired for necessary and proper business purposes, real estate held solely as security for indebtedness, real estate mortgages held to secure any loans or debts, real estate acquired through a mortgage foreclosure or in

the collection of a loan or debt, real estate acquired for the purpose of a sale or a lease to another corporation, or real estate possessed by religious, educational, charitable or scientific corporations (Note 101). South Dakota allows for the holding or taking of real estate by corporations of any sort, as is necessary and proper for carrying out their business (Note 102). West Virginia makes corporations holding land in excess of ten thousand acres subject to a differential tax rate on the excess (Note 103).

### **3. Historical Background and Constitutional Limitations on Alien Land Law in the US: A Political Perspective**

#### *3.1 Historical Background*

The present law affecting foreign investment in land is best understood in the context of its history. The history of alien land rights in America is characterized by considerable complexity and fluctuation. Liberalization and restrictions have competed with each other under different social settings, and states' legislation concerning alien landholding have always been subject to modification. Generally, restrictions on alien land tenure have moved through four phases in American history, each of which, without exception, has been closely followed by the active action of replacement.

##### *3.1.1 Alien Land Law in the Colonization Era*

The first phase can be traced back to the colonial era, when America accepted the notion of alien disability from the English colonists (Note 104). English colonists brought with them a complex set of restrictions on alien handholding when they arrived on the American continent. While they dominated the new land, in colonial times, these rules had the effect of excluding non-English people from acquiring, holding and transferring land (Note 105). Non-British people could seek a prerogative for their landholding by acquiring the status of denizens or, preferably, by obtaining naturalization (Note 106). The desire to acquire landholding abilities was regarded as the predominant incentive to acquire the status of a British subject at that time (Note 107).

##### *3.1.2 Alien Land Laws after American Independence*

American courts after the revolution initially applied the common law doctrine of alien land disability in essentially the same form, merely replacing feudal subjects with citizens and the feudal king with the state (Note 108).

This brought about a substantial number of important legal questions regarding alien land possession in nineteenth-century US (Note 109). Land speculation was quite popular during the early parts of the nineteenth century. Restrictions on aliens' rights to conveyance thus became "that great spur to the industry, and one of the dearest privileges known in civil society" (Note 110). Strict enforcement of alien land restrictions generated great concerns about the marketability of land in the new states. Land, as the necessary component, for entrepreneurial activities, was increasingly involved in the economic domain. Clear and sound legal titles to land were especially important to the health of the market (Note 111).

Furthermore, the high frequency of land speculation made it impossible for the citizen vendee to check the alien purchaser's naturalization certificate prior to land exchange transactions. On the other hand, the innocent buyer might not be able to fully rely on the complete legitimacy of their legal title to engage in a land transaction and were forced to bear unfairly the risk of escheat created by others (Note 112). Creditors were another party whose rights could often be affected by the restrictive alien land ownership rules (Note 113).

Accordingly, both the legislature and the judiciary recognized the great uncertainty in land title created by the common law doctrine. They both pushed forward the reformation of common law rules and attempted to perfect the defensible titles of aliens engaged in land transactions through general regulations, private bills and judicial decisions (Note 114).

Courts in this process modified some key elements of alien land restrictions and applied the law in the manner believed to be the most appropriate to the new undertaking of economic activities (Note 115). Court decisions which fashioned the new rules of alien land rights fell into the following categories (Note 116). Firstly, although, theoretically, the courts fashioned restrictive rules to govern alien land conveyance, in terms of practical significance, the defensible title served only to cast a cloud upon the nature of the title which an alien might convey to a citizen (Note 117). States seemed to modify such defensible titles so as to perfect transaction chains in certain circumstances. The South Carolina court, in discussion of the case of *Lauren's v. Jenney*, stated that a conveyance of real property that used to be held by an alien did not carry with it the state's right of inquest of office and, therefore, the subsequent purchasers of alien-owned land would acquire a full-fee simple title in the chain of conveyance (Note 118). The modified policies carried with them the attempt to secure titles conveyed to citizens from aliens (Note 119). Furthermore, trust instruments were increasingly permitted to allow aliens to hold real property. At the very beginning of the nineteenth century, most courts resisted the arguments that trusts vesting legal title to a citizen for the benefit of an alien should be prevented, as courts argued that, by such an attempt, aliens might secure the ownership of real property by circumventing the common law rules (Note 120). Courts believed that fictional designs attempting to avoid the underlying restrictive principles should not be sustained (Note 121). However, such arguments were modified later to a more permissible regime under which trusts for the benefit of aliens were more likely to be protected and maintained (Note 122). In summary, the courts were increasingly permissive of attempts by aliens to secure real property through private arrangements of trust instruments; the courts now interpreted such circumventions with a more text-based approach; that is, the legal title of land was held by a citizen, which was fully consistent with the requirements of the state policy to confine land ownership to citizens (Note 123). Secondly, the courts permitted aliens to bring suit and defend their possessory right to land, which they were unable to exercise under English law (Note 124). Thirdly, the courts started to permit aliens or citizens to devise land to each other through valid wills (Note 125). All of these actions represented a more lenient approach towards aliens' rights regarding land (Note 126).

However, it was of great importance to recognize that these amendments were merely modifications of the common law, and not a replacement of it. The tenet of common-law tradition remained, thus still restricting the land rights of the foreign-born (Note 127). On the one hand, the court recognized the necessity to reform the old common-law rules tying land rights to allegiance. On the other hand, the underlying doctrines, such as the prohibition of inheritance rights between aliens and citizens, were held not to be repugnant to the new institutions. The underlying doctrine remained, despite social forces which had been expected to lead a change. The common-law traditions had a tenacity that was deeply rooted and could not be removed overnight (Note 128).

The strict judicial enforcement of the common-law doctrine accelerated the tendency to treat the political and civil rights of citizenship as separate categories (Note 129). The selection of citizen as the relevant standard for exclusion furthered the dichotomy between a citizen's civil rights, including the right to own real property, and a citizen's political rights, such as the right to vote and hold office (Note 130). When the vast territory of the new states required a larger population to increase the market economy of the land, the newcomers were widely welcomed and allowed to reside first, before proceeding to naturalization (Note 131). By granting the alien residents certain economic rights prior to naturalization and relaxing restrictions on land rights, these judicial efforts affected citizenship in a way that furthered the separation of political and civil rights.

### 3.1.3 Alien Land Law in the Era of Western Movement

Towards the end of the nineteenth century, these alien land restrictions were gradually removed; by 1880 aliens were granted the same treatment as citizens in more than half of the states and others had greatly modified the pervasive view of the common-law rules (Note 132). Moreover, western states tended to relax alien land restrictions more radically than eastern ones (Note 133). These new legislative and judicial efforts can almost certainly be attributed mostly to the need to attract settlers to the vast territory of the western regions, with their harsh natural environment (Note 134).

With thousands of aliens swarming into the western frontier to acquire large areas of land, the extensive alien land ownership in the frontier territories of the Great Plains gradually became a matter of great concern (Note 135). The increased landholding of aliens engendered a certain sense of fear in the territory among local people. States considered themselves at great risk of being re-colonized by European landowners and held that such a large scale influx of alien population might threaten the independence of newly-established states (Note 136). The Territorial Land Act 1887 was passed to exclude European investors from acquiring large tracts of land in newly-opened territories (Note 137).

### 3.1.4 Alien Land Law in the Era of Racial Intolerance

Resentment of alien land ownership arose later, during the 1880's and 1890's, as a result of the depressed agricultural condition and the perceived dangers of large-scale land acquisition by aliens (Note 138). Alien landholdings were extensive and large amounts of farmland had been acquired by aliens through different forms of ownership, such as the Cattle Company, mortgage loan corporations and property trusts (Note 139). The wide range of companies of such nature caused the businesses of

local farmers to shrink dramatically and, gradually, their existence was believed to threaten the existence of many local farm companies and families (Note 140).

Motivated by racial intolerance, or by the fear of strong competition from the hard-working aliens, local farmers created the anti-alien movement known as the Populist Movement (Note 141). Legal enforcement against absentee landlordism was one of the measures proposed. In the face of economic downturn, along with increased land tenancy by aliens, the legislature appears to have prevented any form of outright ownership or indirect means of acquisition by aliens. Courts also attempted to prevent aliens from circumventing the restrictive rules by piercing the corporate veils in certain cases if the title of land was transferred to local corporations designed to avoid the statutes (Note 142). As most of the farming aliens during this period were British-born, the movement operated primarily against British citizens (Note 143).

As the farm depression passed and the agitation against absentee landlords diminished, a new wave of protectionism arose (Note 144). This was the result of a large-scale influx of Japanese immigrants and their establishment of farming communities in the Pacific-coast states (Note 145). The anti-Japanese sentiment in these states remained until the end of the Second World War (Note 146). Strong economic pressures, along with racial prejudice, led to protective policies being enacted throughout most regions of the US. California was the first state to curtail the landholding of the Japanese and turned out to be the model for other states to follow (Note 147).

Following World War II, the strong support for alien land ownership on the grounds of equal protection and due process greatly overruled alien land restrictions, and thus anti-Japanese regulations were substantially repealed (Note 148). Encouraged by the courts' new stance, the legislative practice discriminating against landholding by Orientals was either invalidated or removed (Note 149).

### 3.1.5 Conclusion

The review of these historical fluctuations indicates that social forces were often the incentive behind reforms of state constitutions and provisions. In the midst of economic downturn and native agitation, the alien landholding laws were tightened, while economic prosperity brought about a more permissive regime (Note 150). History also suggests changes in the rights of aliens and citizens, which are increasingly connected in more integrated economic structures, meaning that any deterioration in aliens' rights will have a consequent effect on the quality of living of the national citizens (Note 151).

### 3.2 *Constitutional and Treaty Limitations on Alien Land Ownership Law*

Although the history of US alien land law relies heavily on nationality as a basis, it can be seen that over time the rules have undergone substantial modifications in the direction of equal rights of acquisition for aliens. Currently, state alien land law may be subject to direct and indirect limitations imposed by the US Constitution and treaties. The direct limitations arise from the Fourteenth Amendment dealing with equal protection and due process, while indirect restraints are placed through the constitutional subordination to federal authority under the supreme clause of Article VI of the Federal Constitution. Under these clauses, the exclusive federal power of foreign relations and foreign

commerce might override any conflicting state regulations, while the treaty provisions will supersede inconsistent state statutes.

### 3.2.1 Equal Protection

The equal protection clause of the Fourteenth Amendment has been a significant protection instrument for aliens, especially resident aliens (Note 152).

There are two standards of review used to interpret alien land laws in terms of equal protection, namely, strict scrutiny and deferential review (Note 153). Strict scrutiny applies if the regulations affect fundamental rights or special public interests (Note 154). The deferential review requires only fair and substantial relations between the classification and the objectives of the legislation (Note 155).

The Supreme Court since 1940s identified classification based on alienage as one subject to strict scrutiny. It argued that aliens were one of the “discrete and insular” minorities against which discrimination could be retained only if necessary to the achievement of a permissible state interest (Note 156). As the burden of proof of that interest lay with the state and was unlikely to be fulfilled given the particular nature of discrimination inherent in the state law governing alien land ownership, the Supreme Court has struck down many state statutes forbidding aliens from land ownership (Note 157).

The courts, in applying the equal protection clause, have limited its application to resident aliens—those who have been lawfully permitted to reside in the US but are ineligible for citizenship. Accordingly, only statutes that disadvantage resident aliens are subject to the strict scrutiny of judicial review. In the case of *Oyama v. California*, the court held invalid the Californian statutes which did not permit the alien father to pay consideration for the purchase of land by his citizen son, as a way of circumventing the restrictions. In the later case of *Takahashi v. Fish and Game Commission* (Note 158), the court reiterated the permissibility of treating citizens and resident aliens indistinguishably with respect to the right to hold commercial fishing licences. The court defined the acquisition of the licence as the basic right to earn a living and rejected the state’s proposition to limit the distribution of its resources to its citizens only (Note 159).

The claims of non-resident aliens are treated quite differently. Although this group of aliens still belong to a minority group, they are not treated as part of a “discrete and insular minority for whom heightened judicial solicitude is appropriate” (Note 160) and thereby can only establish claims based on the lower standard of review—the deferential review.

In the case of *Lehndorff Geneva, Inc. v. Warren* (Note 161), the court applied the lower level of review to the Wisconsin statute prohibiting non-resident aliens from owning land. The court held that the duties and burdens that the resident alien had in common with the citizen entitled him to most of the benefits enjoyed by citizens. But burden sharing, except for the payment of taxes in connection with the ownership or development of land, was lacking in the case of non-resident aliens (Note 162).

In other words, the rights protected by the higher level test of the equal protection doctrine involve only those basic human rights that might affect the alien's ability to survive (Note 163). Insofar as acquisition of land seems necessary to the permanent living of resident aliens, it is legitimate to classify their claims as of fundamental concern (Note 164). The claims of non-resident aliens, however, who acquire land purely for investment reasons, are assessed at the lower level, which has been taken in certain cases as a test for economic and social legislation (Note 165).

### 3.2.2 Substantial Due Process

Substantial due process is another doctrine applied by the court to invalidate anti-oriental legislation. Unlike the equal protection clause, the due process clause is not limited to persons "within the jurisdiction" of the state and, thus, any rule regarding the land ownership of non-resident aliens is covered by the provisions contained in it.

To satisfy the due process requirement, the state has to present a rational link between the purpose of the law and legitimate state interests (Note 166). To make this clearer, the doctrine of equal protection was established to identify the legitimacy of the classification of aliens, while substantial due process was created to address the legitimacy of the objectives of statutes; they are two doctrines by which the court reviews alien land statutes from two different perspectives (Note 167). Although the due process doctrine conveys no substantial limitation on the legislative power of the state, it demands a more clear articulation of the legislative purpose and offers another means of removing alienage regulations by resorting to constitutional examination.

It is without doubt that any restrictive statutes currently being applied will have a rational relationship to certain state interests. The real issue is whether the state interest underlying the restrictions on alien land ownership is sufficiently legitimate to survive due process review (Note 168). Due process requires a more substantial basis behind the state interest. Therefore a mere declaration that a state is trying to exclude the influence of aliens from the local economy would not suffice to make the statutes at issue valid under substantial due process (Note 169). More substantial and convincing arguments would have to be given (Note 170). So far, there are still sixteen states that impose constraints on land ownership by non-residents and eleven states that subject all aliens to discriminatory measures. In the absence of a legitimate purpose, the states have no justification for imposing any restrictions on aliens' land ownership.

The due process clause is seen to have another important effect, that is, it incorporates the Fourteenth Amendment's obligation to provide compensation for taking a property for public use (Note 171). It offers an alternative to remedy the embedded common-law restrictions imposed on alien landholding. Therefore, aliens could receive governmental compensation for losses incurred either in the case of escheat or as a result of failure to dispose of a property within the required period of time (Note 172).

### 3.2.3 Foreign Commerce

The federal power over interstate and foreign commerce presents another challenge to the restrictions imposed by states on alien landholding. Justice Marshall, in the case of *Gibbons v. Ogden*, held that the concept of foreign commerce may not be limited to “traffic ... buying and selling, or the interchange of commodities” (Note 173). It may be understood in a wider sense as the “commercial intercourse between nations, and parts of nations, in all its branches (Note 174)”. Real estate transactions cross states and borders and therefore fall into the scope of commerce as they involve cross-border money transfers and business management.

However, the courts have held that the commerce clause, by its own terms, may prove difficult to invalidate state legislation (Note 175). By defining alien landholding as traditional activities within the scope of state authority, the courts attempt not to interfere with the traditional power reserved by the states (Note 176). In terms of real property, although the devolution of real property, when aliens are involved, may include some extraterritorial elements, such as foreign banking transactions, and foreign real estate agencies, these activities are only elements facilitating alien land transactions, rather than elements that reflect the fundamental aspects of the transactions (Note 177). The fundamental element pertaining to an alien land transaction involves the transfer of title over the land, which is traditionally presumed to be within the scope of state authority (Note 178). Failure to recognize the nature of real estate transactions may lead to some improper conclusions that certain transactions involving aliens might be immune from the regulatory power of commerce clause, in cases where all these facilitating activities are fully completed within the territory of the US. On the other hand, a transaction involving only US citizens might turn out to be subject to the commerce clause regulation if it is enforced through the application of international facilities, such as international telephone calls or foreign capital transfers (Note 179).

The federal government has also ratified a number of treaties that maintain the validity of state statutes excluding alien ownership of real estate (Note 180). By doing so, the federal government seems to be implicitly recognizing the exclusive authority of states to regulate their own land ownership matters. In view of the recognition of the state authority in doing so, the national legislation at issue may not be regarded as measures which interfere with the federal exercise of supreme power (Note 181).

### 3.2.4 Foreign Relations

The foreign relations powers of the federal authority are used in another argument to justify state alien land law. It is held that foreign affairs issues are in the exclusive realm of the federal government (Note 182). The participation of aliens in economic transactions within a state makes them a matter of international concern and therefore enables the federal government to interfere by applying their foreign relations powers (Note 183). However, given the fact that regulations on alien landholding are traditionally a local concern (Note 184), there has been a tradition for the courts to expressly uphold state statutes that have an implicit or indirect effect on foreign affairs issues.



Cases before 1968 held that the alien landholding statutes with reciprocity clauses did not represent an interference with foreign relations (Note 185). These regulations were claimed to be only incidental to foreign relations and could not, by itself, be taken as intruding on the exclusive domain of the federal government (Note 186).

In 1968, through the case of *Zschernig v. Miller* (Note 187), the Supreme Court first established the principle that state alien landholding statutes may be invalidated solely due to the “intrusion by the state into the field of foreign affairs” (Note 188). In that case, the Supreme Court invalidated the state statute that excluded alien heirs from the true benefits of inheritance by conditioning inheritance rights on reciprocity. By doing so, the Supreme Court seemed less concerned with the validity of the reciprocity statute, and more with the way in which the local judicial organs applied the statute. The local courts were found to generally engage in political inquires “into the type of governments that obtain in particular foreign nations” (Note 189) and acted in quite an undiplomatic way, which impeded the effective exercising of national foreign relations powers.

The Supreme Court removed this criterion and stated that the discriminatory nature of the statute alone warranted its invalidation in the following cases. In *Bethlehem Steel Corp. v. Board of Commissioners* (Note 190), a California Appellate Court struck down the California “Buy American Act”. The court held that conditioning the granting of public construction contracts to the consent to use and supply American-made materials had a “direct impact upon foreign relations” (Note 191), and was an “intrusion into an exclusive federal domain” (Note 192). The Pennsylvania court also invalidated its statute, based purely on reading the discriminatory policy implicit in the law, without inquiring into its application, in its decision regarding *Demczuk Estate* (Note 193).

As indicated in the above cases, the court still refused to remove the restrictive statutes based on federal foreign relations powers at the beginning of the twentieth century. However, towards the middle of that century, the courts slightly modified this position, deeming the statutes to be repugnant to the constitutional power of federal foreign relations in certain cases and, finally, established criteria to level out certain restrictive rules (Note 194). Although the authority to regulate land ownership has been taken as the exclusive domain of the state, it has been seen from the cases mentioned above that such a tradition is gradually being dismantled. Furthermore, the cases bring about the idea that laws with discriminatory provisions against or in favor of particular nations might impair relations with those or other nations and thus have to be disapproved (Note 195).

### 3.2.5 Treaty Obligations

US treaty obligations under international law perform as the supreme law of the nation and, thus, may override conflicting state legislation. The existing treaty obligations of the US regarding alien land ownership are found in the multilateral agreement of GATS, regional integration agreements and bilateral free trade agreements. However, upon the ratification of such treaties, treaty nationals are no longer subject to any conflicting rules prescribed in the relevant statutory law, although this does continue to apply to non-treaty aliens (Note 196).

It is apparent that these treaties tend to legitimize acquisitions for the purpose of business operations and residential undertakings, but not those for agricultural development or of land located in special areas (Note 197). In this way, the US aims to ensure domestic public interest objectives, primarily national security and food security interests, which will be discussed in section 6.

### *3.3 Conclusion*

It is apparent that these legal doctrines maintain direct links between full national rights of land ownership and the nationality or residency status of the landholder. From the standpoint of legal philosophy, only those who contribute are entitled to the rights granted by the states. As non-resident aliens do not contribute to society or the states to the same extent as permanent residents or citizens, states feel there is no requirement to grant them the same benefits. However, this still reflects the traditional view of treating landholding rights as political and social rights, rather than economic ones. Alien investors, in the pursuit of economic benefits, have to acquire land in order to carry out their normal economic activities in the state. Such rights are protected by the substantial due process doctrines, as well as by the treaties between the US and various foreign countries. The traditional view, which treats the restrictive alien land law as the realm of the state is not sufficient to sustain the restrictions, as there are no substantial and legitimate rationales behind this view—it is simply taken as fact (Note 198). Therefore, unless there is a necessary and over-riding reason in the public interest to the contrary, states may find it hard to defend their restrictive alien land measures, especially when they create obstacles to alien investment activities.

### *3.4 Alien Land Ownership in the US: An Economic Perspective*

An examination of the US alien land law suggests that foreigners are generally allowed to acquire real property for business purposes. In Mississippi, South Dakota and Kentucky, aliens or foreign corporations are entitled to land ownership to the full extent if it is for business purposes (Note 199). However, it cannot be denied that almost all the states have maintained restrictive measures which affect investors' rights regarding land. Only thirteen state jurisdictions have granted aliens national treatment in acquiring and holding real property. Eleven of these ensure equal treatment of residents and aliens, except for certain groups of aliens, such as alien enemies and aliens who have not declared an intention to become a citizen. Sixteen states offer resident aliens the same treatment regarding landholding as citizens (Note 200). Nine jurisdictions restrict the acquisition of land by all types of aliens. However, most international investors that are drawn to the US for real estate investment do not qualify as temporary or permanent residents (Note 201). They are drawn to the US mainly for economic reasons rather than political benefits. As most of the measures currently in force ensure only the equal treatment of residents and nationals, it is apparent that foreign investors still face a number of barriers with respect to ownership of US real estate, in most state jurisdictions.

Apart from the requirement that they be residents, foreign investors are also subject to a wide range of restrictions, such as the requirement regarding the form of legal entity, the dimension and duration of foreign landholding, restrictions on landholding by companies with foreign capital participation,

different land tax measures applied to foreigners and restrictions on capital entry requirements for foreign real estate investors. For example, foreign corporations are required to have a registered office in order to own real property in Florida and Georgia (Note 202). Other states restrict the dimension or the duration of a foreign real property investment (Wisconsin, South Carolina, Ohio and Nebraska) (Note 203). Foreign-controlled enterprises are not permitted to acquire real estate in Wisconsin, Georgia, Ohio, South Carolina and Texas (Note 204).

Given the essential role of land as an input to trade and services as well as an investment, barriers to its access and use may stifle efficiency and growth in the real estate sector and the national economy in general. Foreign investors are generally attracted to the US because of its strong property rights protection, liquid capital markets and political stability. However, the legal environment remains one of the few obstacles that may impede foreigners' confidence, in particular during the current recession, and it thus requires more radical liberalization.

### *3.5 Alien Housing Rights in the US: A Human Rights Perspective*

States may, in order to ensure the secure and peaceful enjoyment of housing rights by their nationals, treat foreigners in a discriminatory way with respect to property rights. Such an approach stems from the essential need to guarantee national public interests and remedy basic issues in the lives of local people. In the US, this has been applied in its allocation of social housing, which is an important program used to fulfill the basic housing needs of the most disadvantaged. The Department of Housing and Urban Development (HUD), as the US federal department responsible for housing, has funded many social housing programs (Note 205). Each may carry detailed and specific eligibility criteria, with schemes funded locally determined locally. Although national eligibility rules are often built into specific social housing programs, the general principle remains that only lawful immigrants and refugees can be eligible for social rented housing (Note 206). For example, in Hawaii, only bona fide residents of the state are eligible to purchase residential houselots within development tracts (Note 207).

### *3.6 Alien Land Ownership in the US: A National Security Perspective*

As mentioned above, some restrictions applied by the US states on aliens may be justified if they meet national security objectives, such as maintaining domestic control over agricultural land, land in particular designated areas, prohibiting land acquisitions by alien enemies or land obtained for exploration for natural resources.

Fourteen states prohibit aliens from acquiring agricultural land to ensure state food security interests (Note 208). Many states grant aliens land ownership but restrict the purposes it may be used for. For example, Iowa, Missouri, North Dakota, and Oklahoma allow agricultural land to be acquired by aliens who undertake to keep the land for non-farming purposes or as industrial sites (Note 209). This is similar to the legislation adopted by Nebraska, Kansas, South Dakota, Minnesota and Arkansas, which is based on an approach excluding aliens from obtaining a title to real estate that will be used for farming or otherwise engaged in farming (Note 210). In certain cases, the acquisition of agricultural

land with the continuing farming establishment may be permitted, such as land acquired by devise or descent, by a process of law in the collection of debts, or by any procedure used for the enforcement of a claim on the land (Note 211). However, agricultural land so acquired must be disposed of within a certain period of time after the title is transferred (Note 212). Such a requirement thus entails the exemption of agricultural landholding by aliens. Additional authorization obligations are also imposed on foreigners pursuing an interest in agricultural land by a large number of states (Iowa, Missouri, Kansas, Maine, North Dakota, Arkansas and Illinois) (Note 213), as well as restrictions on landholding dimensions that are in place in Pennsylvania, discriminatory tax rules in South Carolina and restrictions on the agricultural use of public land in California (Note 214). All of these measures of a restrictive nature enable states to ensure that agricultural interests are held domestically. It is clear that such legislation has been adopted in relation to national security and food security, in particular which could be used to justify such discrimination.

Other restrictions that may be justified on the grounds of national security are measures applied to land in sensitive areas, measures applied to enemy aliens and measures applied to protect national resources. For example, Nebraska and Oklahoma prohibit foreign corporations from acquiring land located outside the limits of the incorporated city or town in which it is based (Note 215). Georgia prohibits aliens or businesses with substantial foreign ownership from acquiring ownership of airports (Note 216).

Alien enemies are subject to statutory limitations or restrictions on the acquisition and retention of real property in Maryland, New Jersey, Georgia, Virginia and Pennsylvania (Note 217). The Trading with the Enemy Act 1917 established the principle that states could confiscate property holdings by alien enemies for the sake of national security. The US government and the states also restrict foreign investment in real estate obtained for the use of or exploration for natural resources. Foreign investors with the intention of developing natural resources, such as minerals, coal, oil and gas, are required to qualify either through declarant resident status or be secured through the reciprocity provision in states such as Alaska, California, Montana, Nevada, Oregon and New York (Note 218). In California, foreigners have to fulfill both requirements in order to obtain a lease or license for such activities (Note 219).

### *3.7 Conclusion*

While broad restrictions remain in the alien land statutes promulgated by the federal government and the states, the trend of globalization, coupled with the process of economic integration, has induced a change in the US. Although, historically, US alien land law was biased heavily in favor of nationality, it can be seen that over time the criteria used have undergone substantial modifications towards equal rights of acquisition for aliens, and in particular non-resident aliens. Measures making the acquisition of land dependent on the nationality and residency status of the acquirer has been viewed as unconstitutional under the equal protection and due process doctrines and challenged by treaty provisions. The traditional view that only those that show their allegiance to the nation may be entitled

to land ownership has had to be reconsidered. As the trend of globalization is expected to continue, state measures are like to be the most dominant remaining barriers to foreign real estate investment in the US. Their elimination, or at least their modification, will be necessary.

The foregoing analysis arguing against the restrictive alien land law does not mean that aliens should be allowed to acquire treatment fully equivalent to that of citizens in all circumstances. Given the crucial importance of land ownership rights in achieving and maintaining public interests, it is unsurprising that both the federal government and the states continue to take regulatory measures against ownership by foreigners. Firstly, the states must ensure the basic living conditions of their own citizens and not allow them to deteriorate through the participation of foreign investors in the real estate market. Secondly, the states must ensure that the removal of such measures does not constitute a threat to national and public security.

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**Notes**

Note 1. 48 USCS § 1501.

Note 2. 48 USCS § 1507.

Note 3. 48 USCS § 1502.

Note 4. Ibid.

Note 5. 48 USCS § 1503.

Note 6. 48 USCS § 1501.

Note 7. 7 USCS § 3501.

Note 8. Aliens' ownership rights mean the rights to *take, hold, transmit and convey* real estate; aliens' inheritance rights mean the rights to take real estate by devise or descent.

Note 9. Code of Ala. § 35-1-1 (2010); Cal Const, Art. I § 20 (2009); Conn. Gen. Stat. § 47-7a (2010); 25 Del. C. § 306 (2010); 25 Del. C. § 308 (2010); 25 Del. C. § 307 (2010); Fla. Const. Art. I, § 2 (2010); Fla. Stat. § 732.1101 (2010); Burns Ind. Code Ann. § 32-22-2-5 (2010); 33 M.R.S. § 451 (2010); MCLS § 554.135 (2010); Tenn. Code Ann. § 66-2-101 (2010); Tenn. Code Ann. § 66-2-102 (2010); Rev. Code Wash. (ARCW) § 64.16.005 (2010); W. Va. Code § 36-1-21 (2010); A.R.S. § 14-2111 (2010) and Utah Code Ann. § 75-2-111 (2010). The old Arizona statute subjected the right to take property by devise or descent to reciprocity but the new law has clearly invalidated the effect of alienage on the distribution of estate by stating that "No person is disqualified to take as an heir because that person or a person through whom that person claims is or has been an alien".

Note 10. Kan. Const. B. OF R. § 17 (2009); La. Const. Art. I, § 4 (2010); ALM GL ch. 184, § 1 (2010); N.D. Cent. Code, § 47-01-11 (2010); R.I. Gen. Laws § 34-2-1 (2010) and N.C. Gen. Stat. § 64-1 (2010).

Note 11. La. Const. Art. I, § 4 (2010); ALM GL ch. 184, § 1 (2010); N.D. Cent. Code, § 47-01-11 (2010); R.I. Gen. Laws § 34-2-1 (2010); Kan. Const. B. OF R. § 17 (2009); K.S.A. § 59-602 (2009); N.C. Gen. Stat. § 64-1 (2010) and N.C. Gen. Stat. § 64-3 (2010).

Note 12. N.C. Gen. Stat. § 64-3 (2010).

Note 13. K.S.A. § 59-602 (2009).

Note 14. C.R.S. 15-11-111 (2010); HRS § 560:2-111 (2010); HRS § 560:2-111 (2010); Minn. Stat. § 524.2-111 (2010); N.J. Stat. § 3B:5-12 (2010); 68 P.S. § 22 (2010); Va. Code Ann. § 64.1-4 (2010); Wis. Stat. § 710.01 (2010); ORC Ann. 2105.16 (2011); N.M. Stat. Ann. § 45-2-111 (2010) and Alaska Stat. § 13.12.111 (2010).

Note 15. R.R.S. Neb. § 4-107 (2010) and Wyo. Stat. § 2-4-105 (2010).

Note 16. Md. Real Property Code Ann. § 14-101 (2010); N.J. Stat. § 46:3-18 (2010) and O.C.G.A. § 1-2-11 (2010).

Note 17. Va. Code Ann. § 55-1 (2010).

Note 18. 68 P.S. § 28 (2010).

Note 19. KRS § 381.290 (2010); V.S.A. Const. § 66 (2010); Cal Pub Resources Code § 8105 (2009); Idaho Code § 58-313 (2010) and ORS § 273.255 (2009).

Note 20. Cal Pub Resources Code § 6801 (2009).

Note 21. Cal Pub Resources Code § 7601 (2009).

Note 22. Nev. Rev. Stat. Ann. § 517.010 (2010); Nev. Rev. Stat. Ann. § 111.055 (2010) and ORS § 517.010 (2009).

Note 23. HRS § 206-9 (2010).

Note 24. Iowa Code § 9I.2 (2010) and Iowa Code § 558.44 (2010).

Note 25. Iowa Code § 9I.3 (2010) and Iowa Code § 9I.4 (2010).

Note 26. Iowa Code § 9I.5 (2010).

Note 27. Iowa Code § 9I.3 (2010) and Iowa Code § 9I.4 (2010).

Note 28. *Ibid.*

Note 29. Iowa Code § 9I.8 (2010) and Iowa Code § 9I.7 (2010).

Note 30. 68 P.S. § 41 (2010).

Note 31. S.D. Codified Laws § 43-2A-2 (2010).

Note 32. § 442.586 R.S.Mo. (2010).

Note 33. § 442.591 R.S.Mo. (2010).

Note 34. § 442.592 R.S.Mo. (2010).

Note 35. N.D. Cent. Code, § 47-10.1-02 (2010).

Note 36. Minn. Stat. § 500.221 (2010).

Note 37. *Ibid.*

Note 38. Wis. Stat. § 710.02 (2010).

Note 39. *Ibid.*

Note 40. *Ibid.*

Note 41. ORC Ann. 5301.254 (2010).

Note 42. Miss. Code Ann. § 89-1-23 (2010) and Miss. Code Ann. § 29-1-75 (2010).

Note 43. Miss. Code Ann. § 89-1-23 (2010).

Note 44. *Ibid.*

Note 45. Ark. Const. Art. 2, § 20 (2010); MCLS Const. Art. X, § 6 (2010); RSA 477:20 (2010); Wyo. Const. Art. 1, § 29 (2010) and Colo. Const. Art. II, Section 27 (2010).

Note 46. HRS § 171-74 (2010).

Note 47. HRS § 171-68 (2010).

Note 48. HRS § 516-33 (2010).

Note 49. Okl. Const. Art. XXII, § 1 (2010).

Note 50. Alaska Stat. § 09.25.010(b) (2010).

Note 51. KRS § 381.320 (2010).

Note 52. KRS § 381.300 (2010).

- Note 53. Tex. Tax Code §23.77 (2010).
- Note 54. A.C.A. § 2-3-109 (2010).
- Note 55. A.C.A. § 2-3-103 (2010).
- Note 56. 765 ILCS 50/3 (2010).
- Note 57. §442.592 R.S.Mo. (2010).
- Note 58. La. R.S. 41:1216 (2010).
- Note 59. NY CLS Pub L §81 (2010).
- Note 60. Alaska Stat. §38.05.190 (2010) and Mont. Code Anno., § 77-3-305 (2010).
- Note 61. R.R.S. Neb. §76-402 (2010).
- Note 62. S.C. Code Ann. § 27-13-30 (2009) and S.C. Code Ann. § 27-13-40 (2009).
- Note 63. O.C.G.A. § 6-3-20.1 (2010).
- Note 64. Code of Ala. § 10-2B-3.02 (2010); Nev. Rev. Stat. Ann. § 111.055 (2010) and 25 Del. C. § 305 (2010).
- Note 65. MCLS §450.2013 (2010).
- Note 66. N.D. Cent. Code, § 10-06.1-02 (2010) and 18 Okl. St. § 951 (2010). Exceptions apply when agricultural land is acquired as security for indebtedness, by process of law in the collection of debts, by any procedure for the enforcement of a lien or claim or when otherwise used for industrial establishments.
- Note 67. N.D. Cent. Code, § 47-10.1-02 (2010).
- Note 68. S.C. Code Ann. § 12-43-220 (2009).
- Note 69. Iowa Code §9I.2 (2010) and Iowa Code § 558.44 (2010).
- Note 70. Iowa Code §9I.3 (2010) and Iowa Code §9I.7 (2010).
- Note 71. Iowa Code §9I.3 (2010) and Iowa Code §9I.8 (2010).
- Note 72. Iowa Code §9I.2 (2010) and Iowa Code § 558.44 (2010).
- Note 73. Iowa Code §9I.3 (2010).
- Note 74. Iowa Code §9I.5 (2010) and Iowa Code §9I.3 (2010).
- Note 75. Iowa Code §9I.8 (2010) and Iowa Code §9I.7 (2010).
- Note 76. §442.586 R.S.Mo. (2010).
- Note 77. §442.592 R.S.Mo. (2010).
- Note 78. Miss. Code Ann. § 29-1-75 (2010).
- Note 79. Mont. Code Anno., § 77-3-305 (2010).
- Note 80. ORC Ann. 5301.254 (2011); Wis. Stat. § 710.02 (2010); S.C. Code Ann. § 27-13-30 (2009) and S.C. Code Ann. § 27-13-40 (2009).
- Note 81. ORC Ann. 5301.254 (2011).
- Note 82. Wis. Stat. § 710.02 (2010).
- Note 83. S.C. Code Ann. § 27-13-30 (2009) and S.C. Code Ann. § 27-13-40 (2009).
- Note 84. Ibid.



- Note 85. R.R.S. Neb. §76-402 (2010).
- Note 86. R.R.S. Neb. §76-402 (2010) and R.R.S. Neb. §76-414 (2010).
- Note 87. Fla. Stat. §607.0505 (2010) and O.C.G.A. §16-14-15 (2010).
- Note 88. Wis. Stat. §710.02 (2010) and La. R.S. 9:3423 (2010).
- Note 89. Tex. Tax Code §23.77 (2010).
- Note 90. Wis. Stat. §710.02 (2010).
- Note 91. O.C.G.A. §6-3-20.1 (2010).
- Note 92. Ne. Const. Art. XII, §8 (2010) and S.D. Const. Article XVII, §7 (2010).
- Note 93. 7 M.R.S. §33 (2010) and 7 M.R.S. §34 (2010).
- Note 94. The specific types of agricultural entities that are not subject to the general prohibition rules include family farm corporations, authorized farm corporations, limited liability agricultural companies, family farm limited liability agricultural companies, limited agricultural partnerships, family trusts, authorized trusts and testamentary trusts.
- Note 95. K.S.A. §17-5904 (2009).
- Note 96. K.S.A. §17-5902 (2009).
- Note 97. §350.015 R.S.Mo. (2010).
- Note 98. N.D. Cent. Code, §10-06.1-02 (2010); N.D. Cent. Code, §10-06.1-06 (2010) and N.D. Cent. Code, §10-06.1-07 (2010).
- Note 99. N.D. Cent. Code, §10-06.1-17 (2010) and N.D. Cent. Code, §10-06.1-19 (2010).
- Note 100. N.D. Cent. Code, §10-06.1-18 (2010).
- Note 101. 18 Okl. St. §1020 (2010).
- Note 102. S.D. Const. Article XVII, §7 (2010).
- Note 103. W. Va. Code §11-12-75 (2010).
- Note 104. Sullivan, C., "Alien Land Laws: A Re-Evaluation" (1962) 36 Temple Law Quarterly 15; p. 26.
- Note 105. Ibid., p. 27.
- Note 106. See 1 Blackstone's Commentaries 374, which states Letter of denization conveyed no political rights but gave the aliens capacity to purchase and hold land and to transmit it to any children after born after denization. But the authority of colonial governors to issue such letters is often curtailed by British Crown. Therefore Naturalization is preferential approach to acquire landownership.
- Note 107. Sullivan, supra n. 104, p. 17.
- Note 108. Price, P. J., "Alien Land Restrictions in the American Common Law: Exploring the Relative Autonomy Paradigm" (1999) 43 The American Journal of Legal History 152, p. 157.
- Note 109. Ibid., p. 156.
- Note 110. *Commonwealth v. Martin* [Va. App. 1816] 5 Munf. 117, p. 153.
- Note 111. Alexander, G. S., *Commodity & Property: Competing Visions of Property in American Legal Thought 1776-1970*, (University of Chicago Press 1997), p. 190.
- Note 112. The term is referred to the situation where a legal interest in land is transferred to the

- government if the person dies interstate without a will or an heir to his or her estate.
- Note 113. Price, supra n. 108, p. 187.
- Note 114. See 21 Michigan 1827 and 50 U.S.C. app. §1 (1970).
- Note 115. Price, supra n. 108, p. 162.
- Note 116. Ibid.
- Note 117. Ibid.
- Note 118. See *Lauren's v. Jenney* [S.C. 1843] 1 Speers 356, pp. 363-364.
- Note 119. Price, supra n. 108, p. 163.
- Note 120. *Hubbard v. Goodwin* [Va. App. 1832] 30 Va. 492, p. 551.
- Note 121. Price, supra n. 108, p. 182.
- Note 122. *Marx v. McGlynn* [1882] 88 N.Y. 357, p. 376.
- Note 123. Price, supra n. 108, p. 182.
- Note 124. Ibid., p. 194.
- Note 125. Ibid., p. 174.
- Note 126. Ibid., p. 195.
- Note 127. Ibid., p. 191.
- Note 128. Pound, R., *The Formative Era of American Law*, (Little, Brown and Co. 1938), p. 82.
- Note 129. Price, supra n. 108, p. 196.
- Note 130. Ibid., p. 197.
- Note 131. Ibid., p. 169.
- Note 132. Sullivan, supra n.104, p. 29.
- Note 133. See 31 C.F.R. PT. 500 (1975); 8 C.F.R. pts. 501-10 (1975) and Cal. Stat. 1913.
- Note 134. Price, supra n. 108, p. 169.
- Note 135. Morrison, F., "Limitations on Alien Investment in American Real Estate" (1975) 60 *Minnesota Law Review* 621, p. 625.
- Note 136. Ibid.
- Note 137. 48 U.S.C. §§ 1501-07 (1970).
- Note 138. Sullivan, supra n. 104, p. 31.
- Note 139. The greatest cause of resentment was the activity of an Anglo-Irish absentee, William Scully, who attempted to implant "Irish Landlordism" in America which finally led to resentment from local farmers and, to a great extent, the populist movement that followed.
- Note 140. Sullivan, supra n. 104, p. 31.
- Note 141. Morrison, supra n. 135, p. 626.
- Note 142. Sullivan, supra n. 104, p. 32.
- Note 143. Ibid., pp. 31-32.
- Note 144. Ibid., p. 32.
- Note 145. Morrison, supra n. 135, p. 626.

Note 146. Ibid.

Note 147. *Ferguson v. Skrupa* [1963] 372 U.S. 726 (hereinafter "*Ferguson v. Skrupa*"); The anti-Japanese legislation had spread throughout the Pacific Coast and extended as far as Delaware; Oregon, Idaho, Montana, Arizona, Kansas, Texas and Delaware followed such an regulation while New Mexico and Louisiana declared the restriction in their institutions.

Note 148. Morrison, supra n. 135, p. 625.

Note 149. Ibid., pp. 627-628.

Note 150. Price, supra n. 108, p. 174.

Note 151. Neuman, G., *Strangers to the Constitutions: Immigrants, Borders and Fundamental Law*, (Princeton University Press 1996), p. 59.

Note 152. Madison, J., "Alien Landownership in the United States: A Matter of State Control" (1988) 14 Brooklyn Journal of International Law 147, p. 171.

Note 153. Morrison, supra n. 135, pp. 639-40.

Note 154. *Loving v. Virginia* [1967] 388 U.S. 1

Note 155. *Dandridge v. Williams* [1970] 397 U.S. 471, p.485; *McGowan v. Maryland* [1961] 366 U.S. 420, pp. 425-427.

Note 156. See *Ferguson v. Skrupa*.

Note 157. See *Graham v. Richardson* [1971] 403 U.S. 365; *Sugarman v. Dougall* [1973] 413 U.S. 634; *Re Griffiths* [1973] 413 U.S. 717.

Note 158. See *Takahashi v. Fish Com 'n*.

Note 159. Madison, supra n. 152, p. 172.

Note 160. See *Shaffer v. Heitner* [1977] 97 S.Ct. 2569.

Note 161. *Demczuk Estate* [1971] 444 Pa. 212, 282 A. 2d 700 (hereinafter "*Demczuk Estate*").

Note 162. *Lehndorff Geneva, Inc. v. Warren* [1976] 74 Wis. 2d 369, 246 N.W. 2d 815.

Note 163. Morrison, supra n. 135, p. 642.

Note 164. Ibid., pp.642-643.

Note 165. Ibid., p. 643.

Note 166. *North Dakota State Board of Pharmacy v. Snyder's Drugs* [1973] 414 U.S. 156, pp.164-7; *Nebbia v. New York* [1934] 291 U.S. 502; *Ferguson v. Skrupa*, pp. 731-732.

Note 167. Morrison, supra n. 135, p. 645.

Note 168. Ibid.

Note 169. Ibid.

Note 170. Ibid.

Note 171. *Chicago, B. & Q. R. Co. v. Chicago* [1897] 166 U.S. 226.

Note 172. *Shames v. Nebraska* [1971] 323 F. Supp. 1321, p.1341 (Van Pelt, J., dissenting).

Note 173. *Gibbons v. Ogden* [1824] 22 U.S. (9 Wheat.) 1, pp. 189-190.

Note 174. Ibid., p. 190.

- Note 175. Morrison, *supra* n. 135, p. 652.
- Note 176. *Great Atl. & Pac. Tea. Co., Inc. v. Cottrell* [1976] 424 U.S. 366, p.371; *Raymond Motor Transp., Inc. v. Rice* [1978] 434 U.S. 429, p. 441.
- Note 177. Madison, *supra* n. 152, p. 164.
- Note 178. *Ibid.*
- Note 179. *Ibid.*
- Note 180. See for example, Treaty of Amity, Economic Relations and Consular Rights with Muscat and Oman, 1960 2 U.S.T. 1835, T.I.A.S. No. 4530; Treaty of Friendship, Establishment and Navigation with Belgium 1963 2 U.S.T. 1284, T.I.A.S. No. 5432; Treaty of Friendship, Establishment and Navigation with Luxembourg, 1963 1 U.S.T.251, T.I.A.S. No. 5306; Treaty of Amity and Economic Relations with Thailand, 1968 5 U.S.T. 5843, T.I.A.S. No. 6540.
- Note 181. Morrison, *supra* n. 135, p. 652.
- Note 182. *Ibid.*, p. 646.
- Note 183. Fisch, W. B., "State Regulation of Alien Land Ownership" (1978) 43 Missouri Law Review 407, p. 424.
- Note 184. Madison, *supra* n. 152, pp. 167-168.
- Note 185. *Clark v. Allen* [1947] 331 U.S. 503, p. 517.
- Note 186. *Ibid.*
- Note 187. *Zschemnig v. Miller* [1968] 389 U.S. 429.
- Note 188. *Ibid.*, p. 432.
- Note 189. *Ibid.*, p. 434.
- Note 190. *Bethlehem Steel Corp. v. Board of Commissioners* [1969] 276 Cal. App. 2d 221, 80 Cal. Rptr. 800.
- Note 191. *Ibid.*, p. 85.
- Note 192. *Ibid.*
- Note 193. See *Demczuk Estate*.
- Note 194. Fitch, *supra* n. 183, p. 427.
- Note 195. *Ibid.*
- Note 196. Morrison, *supra* n.135, p. 659.
- Note 197. *Ibid.*, p. 661.
- Note 198. The illustration of definitional powers of state can be seen in the decision in the case *Hauenstein v. Lynham* [1880] 100 U.S. 483, p.484; however, in the case of *Reed v. reed* [1971] 404 U.S. 71, the Court held that some more substantial basis has to be established for the discriminatory regulations.
- Note 199. Miss. Code Ann. § 89-1-23 (2010); S.D. Const. Article XVII, § 7 (2010) and KRS § 381.320 (2010).
- Note 200. Morrison, *supra* n. 135, p. 663.

Note 201. NAR (National Association of Realtors), “Foreign Investment in U.S. Real Estate Current Trends and Historical Perspective”, (2003), Available at [http://www.realtor.org/wps/wcm/connect/ff3abe0043207e1fa7b8b7d4db880d7c/research\\_foreign\\_invest\\_2010.pdf?MOD=AJPERES&CACHEID=ff3abe0043207e1fa7b8b7d4db880d7c](http://www.realtor.org/wps/wcm/connect/ff3abe0043207e1fa7b8b7d4db880d7c/research_foreign_invest_2010.pdf?MOD=AJPERES&CACHEID=ff3abe0043207e1fa7b8b7d4db880d7c), Accessed 15 September 2020, p. 11

Note 202. See e.g. Fla. Stat. § 607.0505 (2010) and O.C.G.A. § 16-14-15 (2010).

Note 203. Wis. Stat. § 710.02 (2010); S.C. Code Ann. § 27-13-30 (2009); S.C. Code Ann. § 27-13-40 (2009); ORC Ann. 5301.254 (2011) and R.R.S. Neb. § 76-402 (2010).

Note 204. Wis. Stat. § 710.02 (2010); O.C.G.A. § 6-3-20.1 (2010); ORC Ann. 5301.254 (2011); S.C. Code Ann. § 27-13-30 (2009); S.C. Code Ann. § 27-13-40 (2009) and Tex. Tax Code § 23.77 (2010).

Note 205. Fitzpatrick, S. and M. Stephens, “An International Review of Homelessness and Social Housing Policy” (30 November 2007) Department of Community and Local Government Homeless Research Summary No. 6, p. 13.

Note 206. See *ibid.*, p.89, Annex 1.

Note 207. HRS § 516-33 (2010).

Note 208. They are Missouri, Nebraska, North Dakota, Illinois, Oklahoma, South Dakota, South Carolina, Pennsylvania, California, Iowa, Kansas, Maine, Arkansas and Minnesota.

Note 209. Iowa Code § 9I.8 (2010); Iowa Code § 9I.3 (2010); Iowa Code § 9I.4 (2010); §442.591 R.S.Mo. (2010); §442.591 R.S.Mo. (2010); N.D. Cent. Code, § 47-10.1-02 (2010) and 18 Okl. St. § 951 (2010).

Note 210. Ne. Const. Art. XII, § 8 (2010); K.S.A. § 17-5904 (2009); S.D. Codified Laws § 43-2A-2 (2010); Minn. Stat. § 500.221 (2010); A.C.A. § 2-3-109 (2010) and A.C.A. § 2-3-103 (2010).

Note 211. See for example, Iowa Code § 9I.5 (2010); Iowa Code § 9I.3 (2010); South Dakota: S.D. Codified Laws § 43-2A-2 (2010) and Minnesota: Minn. Stat. § 500.221 (2010).

Note 212. For example, in Iowa, agricultural land acquired by aliens by devise or descent or acquired by a process of law must be disposed of within two years of the title being transferred. See Iowa Code § 9I.5 (2010) and Iowa Code § 9I.3 (2010).

Note 213. See, for example, Iowa: Iowa Code § 9I.2 (2010); Iowa Code § 558.44 (2010); Iowa Code § 9I.8 (2010); Iowa Code § 9I.7 (2010); Missouri: §442.592 R.S.Mo. (2010); Kansas: K.S.A. § 17-5904 (2009); Maine: 7 M.R.S. § 33 (2010); 7 M.R.S. § 34 (2010); North Dakota: N.D. Cent. Code, § 10-06.1-17 (2010); Arkansas: A.C.A. § 2-3-109 (2010); A.C.A. § 2-3-103 (2010) and Illinois: 765 ILCS 50/3 (2010).

Note 214. 68 P.S. § 41 (2010); S.C. Code Ann. § 12-43-220 (2009) and Cal Pub Resources Code § 8105 (2009).

Note 215. R.R.S. Neb. § 76-414 (2010) and 18 Okl. St. § 1020 (2010).

Note 216. O.C.G.A. § 6-3-20.1 (2010).

Note 217. Md. Real Property Code Ann. § 14-101 (2010); N.J. Stat. § 46:3-18 (2010); O.C.G.A. § 1-2-11 (2010); Va. Code Ann. § 55-1 (2010) and 68 P.S. § 28 (2010).

Note 218. Alaska Stat. § 38.05.190 (2010); Mont. Code Anno., § 77-3-305 (2010); Nev. Rev. Stat. Ann. § 517.010 (2010); Nev. Rev. Stat. Ann. § 111.055 (2010); ORS § 517.010 (2009) and NY CLS Pub L § 81 (2010).

Note 219. Cal Pub Resources Code § 6801 (2009).