

Current Developments and Hot Tips

**Mortgage Lending Institute of
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This edition of this Hot Tips paper is again a collection of developments, cases and events which we think are relevant to lawyers who practice in the area of commercial real estate finance, transactions, and development. Some are reports of new developments and some are reminders of law and practice that we think might be useful to you. We are certain that we have overlooked many developments that you would like to see covered, but we have picked those things to report which we think would be helpful to most of you and maybe even entertaining in some ways. We have tried not to step on the toes of the contributors to this seminar who so skillfully inform us of developments in Texas cases.

1. So you thought that your Real Estate Practice was just Texas law? – CFIUS, FinCEN, and the prospect of similar new laws from the Texas Legislature

A. A refresher on CFIUS organization, powers and regulations.

CFIUS is the “Committee on Foreign Investment in the United States” – a group of federal agencies organized in the Treasury Department which is intended to watch out for acquisition and use of US property by foreign entities or individuals in any way which might threaten US security efforts. The agency was organized in response to foreign entity acquisitions of property near army and naval bases and other defense facilities which could give foreign nations the ability to observe our military operations, intercept radio and other signals, etc. The regulations do not prohibit acquisitions or leases by foreign nationals or organizations, but allow CFIUS to review transactions and even to set aside transactions after closing if the transaction is deemed dangerous to US security. The statutory authority is Section 721 of the Defense Production Act, as amended, most recently by the Foreign Investment Risk Review Modernization Act of 2018. 50 U. S. C. Section 4565. The potentially impacted transactions do not include single family homes or condos, or leases of less than 10,000 square feet, but do include a broad array of real estate transactions.

CFIUS regulations concern what they call “geographical targeting”, which means that areas in which transactions are subject to review are those within certain areas, which can be as little as one mile around certain sensitive security operations (such as the US Army Futures Command in downtown Austin) or up to 100 miles around certain military bases (two in Texas as of last year).

B. Expansion of areas subject to CFIUS Review – more of Texas than you ever imagined. The recent development we want to point out to you is the expansion of the targeted areas by addition of 50 military establishments, and moving some

already listed from the one mile radius areas into 100 mile radius areas. 89 Fed. Reg., pages 58653 et. seq. from the Department of the Treasury concerning Part 802 of Title 31 of CFR (July 19, 2024).

The changes which have something to do with Texas property transactions are:

Naval Air Station Corpus Christi, added to the one mile radius list.

Red River Army Depot, located in Texarkana, Texas, also added to the one mile radius list

Goodfellow Air Force Base in San Angelo, added to the one hundred mile list

Joint Base San Antonio (composed of old Fort Sam Houston and Lackland AFB) moved from the one mile list to the 100 mile radius list

The targeted areas in Texas which were subject to the regulations and which continue to be subject to it are:

Ellington Field Joint Reserve Base in the Houston area, which is on the one-mile radius list

Fort Bliss in El Paso, which is in the one-mile radius list

Fort Cavazos (previously named Fort Hood) in Killeen, which is on the one-mile radius list

Dyess Air Force Base, located in Abilene, on the one hundred mile list

Laughlin Air Force Base, located in Del Rio, on the one hundred mile list

If you took a Texas map and drew the circles for all these targeted areas, you would see that a great part of the state is within CFIUS regulations as a targeted area, and so purchase and sale transactions and major leases would be within the areas with which your clients might be concerned about their transactions. The title companies are alerted to these regulations, but generally will not know or point out to you the possible application of these regulations to your client's transaction.

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