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Foreign capital withdrawal from the US real estate market: legal certainty as a window of opportunity for international investors.

The retreat of foreign capital from the United States real estate market: legal certainty as a window of opportunity for international investors

Retraction of foreign capital in the United States real estate market: legal security as a window of opportunity for the international investor

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SUMMARY

This article examines the recent retraction of foreign capital in the United States real estate market and argues that legal certainty, understood as the ability to predict, structure, and document the legal effects of an acquisition, has become the main competitive advantage for international investors seeking to enter this market. The research adopts a qualitative, exploratory, and descriptive approach, combining a literature review in institutional economics, international real estate finance, and urban planning with documentary analysis of federal and state regulations, court decisions, and statistical series published by the National Association of Realtors and MSCI. The data indicates that the volume of residential purchases made by foreigners fell from US$153 billion in the period ending in March 2017 to US$42 billion in 2024, with a partial recovery to US$56 billion in 2025, and that foreign participation in commercial real estate investment declined to 6% in the first quarter of 2024. The analysis demonstrates that this contraction coincides with increased regulation on four fronts, namely, federal taxation on sales and inheritances, investment controls for national security reasons, and the multiplication of...

State restrictions on foreign ownership and transparency requirements regarding the ultimate beneficiary are also highlighted. It is concluded that the more complex environment raises transaction costs and discourages unprepared capital, but opens up opportunities for investors who arrive supported by rigorous due diligence, appropriate corporate structures, and regulatory compliance, especially in mixed-use projects aimed at revitalizing underutilized urban areas.

Keywords: foreign investment; real estate market; legal certainty; FIRPTA; mixed use.

ABSTRACT

This article examines the recent retreat of foreign capital from the United States real estate market and argues that legal certainty, understood as the ability to anticipate, structure and document the legal effects of an acquisition, has become the main competitive advantage for international investors seeking to enter that market. The research follows a qualitative, exploratory and descriptive approach, combining a literature review in institutional economics, international real estate finance and urban planning with a documentary analysis of federal and state statutes, court decisions and statistical series published by the National Association of Realtors and MSCI. The data show that residential purchases by foreign buyers fell from US$153 billion in the twelve months ending March 2017 to US$42 billion in 2024, with a partial recovery to US$56 billion in 2025, while the foreign share of commercial real estate investment dropped to 6% in the first quarter of 2024. The analysis shows that this retreat coincides with regulatory tightening on four fronts, namely federal taxation of dispositions and estates, national security review of foreign investment, the spread of state restrictions on foreign ownership of land, and beneficial ownership transparency requirements. The study concludes that the more complex environment raises transaction costs and drives away unprepared capital, but opens room for investors backed by rigorous due diligence, appropriate corporate structures and regulatory

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compliance, particularly in mixed-use projects aimed at revitalizing underutilized urban areas.
Keywords: foreign investment; real estate market; legal certainty; FIRPTA; mixed-use development.

1 INTRODUCTION

For much of the last few decades, the United States held the position of preferred destination.
of international real estate capital. The depth of the market, the stability of the currency, the tradition
protection of private property and the existence of a registration and insurance system relatively
Predictably, these changes have transformed American real estate into a store of value for investors.
different origins. For many Latin Americans, and in particular for Brazilians, the acquisition of
Real estate in Florida has become an instrument for asset dollarization and planning.
familiar. This picture, however, has visibly changed in the last decade. According to the series
Annual figures from the National Association of Realtors (NAR) show the volume of residential purchases made by
Foreign investment decreased from US$153 billion in the period ending in March 2017 to US$42 billion.
in 2024, the lowest level in the recent series, and the participation of international investors in the market.
Commercial real estate sales fell in the first quarter of 2024 to their lowest level since 2011, according to...
with MSCI data released by Long (2024).
The most widely accepted explanation for this movement attributes the contraction to macroeconomic factors.
such as the appreciation of the dollar, the rise in interest rates, the effects of the pandemic on the use of offices and the
Trade dispute between the United States and China. These factors are real and documented, but not
They exhaust the problem. In the same timeframe, the legal environment applicable to the foreign buyer.
It became considerably denser. In 2024, the Treasury Department changed the way it was structured.
to assess domestic control of real estate investment vehicles for Foreign Investment purposes
in the Real Property Tax Act (FIRPTA) and expanded the list of military installations subject to review of
Committee on Foreign Investment in the United States (CFIUS). By the end of 2025, twenty-eight states
had already adopted some restriction on real estate ownership by foreigners, according to
survey by the National Agricultural Law Center (2025), and the transparency rules on the
The ultimate beneficiary has undergone successive reformulations, suspensions, and legal disputes.
It is therefore assumed that a significant portion of the contraction in foreign capital reflects the
The increased cost of legal uncertainty, and the fact that this same complexity creates a window of opportunity.
This is an opportunity for investors entering the market with qualified information and structures.
appropriate. The objective of the article is to examine how federal and state regulatory density affects
The decision to invest and how legal certainty can function as a competitive advantage.
in a market with less foreign competition. To that end, the text initially presents the

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The methodology adopted discusses the theoretical foundations that link institutions, information, and international investment, analyzes the contraction data and then goes through the federal taxation, control for reasons of national security, state restrictions, transparency rules and the The role of mixed-use developments in urban revitalization, before presenting the conclusions.

2 METHODOLOGY

Regarding its nature, the research is qualitative and, regarding its objectives, exploratory and descriptive, according to the classification proposed by Gil (2008). It is exploratory because the topic encompasses phenomena recent developments, still poorly systematized by Brazilian legal literature, such as the expansion of laws US state laws on foreign property and the succession of rules on beneficial ownership. It is descriptive because it seeks to precisely characterize the regulatory framework and data of The market that defines the scope of international investor activity. The reasoning employed is... predominantly deductive, starting from general propositions of institutional economics and finance. international real estate companies to examine the specific case of the United States market between 2017 and 2026.

The bibliographic procedure focused on reference works and articles published in Peer-reviewed journals, with preference for widely cited studies and authorship. identifiable, such as those published in the Journal of Political Economy, in the Journal of Financial Economics, in the Journal of Real Estate Finance and Economics, in the Journal of Urban Economics, in Academy of Management Journal, the Journal of International Business Studies and the Journal of the American Planning Association. Classic texts on information asymmetry were included. transaction costs, institutions and disadvantages of being a foreigner, in addition to empirical studies on Key drivers of international real estate investment, market transparency, zones of Opportunity and transformation of office space. In Brazilian legal doctrine, reference was made to works... international tax law to examine the absence of a treaty between Brazil and the United States.

The documentary procedure encompassed primary sources of a normative and jurisprudential nature, such as Internal Revenue Code provisions, regulations published in the Federal Register, state laws From Florida and Texas, federal legislation on investment control and corporate transparency. and decisions of federal courts. The statistical series were extracted from the NAR's annual reports. regarding international transactions in the residential market, covering periods of twelve months. closed in March, and MSCI data on commercial real estate, accessed through specialized journalistic dissemination. The Global Real Estate Transparency Index was also used. JLL consulting firm, as a comparative indicator of institutional transparency between countries.

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The materials were treated through content analysis, following the approach proposed by Bardin (2016).
with the prior definition of six analytical categories that correspond to the development sections.
from the article, namely, theoretical foundations, transparency and data on contraction, taxation and security.
national, state restrictions, transparency regarding end beneficiaries, and urban revitalization through
of mixed-use developments. Three main limitations are recognized. The first stems from
NAR's methodology, based on research with brokers and which includes buyers...
The second results from indirect access to foreign immigrants who have recently become residents in the United States.
based on MSCI data. The third derives from the speed of regulatory changes, which is why the
The timeframe for the analysis ends in October 2026.

3. Information asymmetry, transaction costs, and the disadvantage of BEING A FOREIGNER

The theoretical starting point for understanding the behavior of the international real estate investor.
This is the problem of asymmetric information. In a classic study, Akerlof (1970) demonstrated that, when
The seller knows the quality of the goods better than the buyer, so the market tends to deteriorate.
because the buyer starts offering an average price that drives away good quality goods and attracts low-quality ones.
inferior quality. The property is a near-perfect example of this type of asset. Each unit is
unique, its legal status depends on a chain of ownership that can go back decades, and
Vices such as hidden encumbrances, tax debts, zoning restrictions, or environmental liabilities are rarely found.
These are visible at the time of negotiation. For the foreign buyer, who is unaware of the
Despite the functioning of registries, title insurance, and municipal regulations, this asymmetry is still present.
more pronounced, which tends to reduce their willingness to pay or even drive them away from the market.
Transaction cost economics offers the second key to understanding. Coase (1937) observed that
Turning to the market has its own costs, related to information gathering, negotiation, and...
formalization of contracts, and that the way an economic activity is organized depends on
comparison between these costs. Williamson (1985) developed this intuition by showing that
Transactions characterized by high asset specificity, uncertainty, and low frequency require structures
More elaborate governance structures are needed to curb opportunism. The acquisition of real estate in another country.
It combines these three characteristics. The asset is fixed and specific, the investor faces uncertainty about the
applicable law and, as a rule, performs few operations over time, without accumulating learning.
sufficient to reduce the risk on its own. Hence the need for detailed contracts, vehicles
own corporate partners and specialized intermediaries capable of diluting these costs.
North's (1990) contribution shifts the analysis from the individual transaction to the environment.

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institutional. For the author, institutions are the rules of the game in a society, both formal and informal.
And its central role is to reduce uncertainty by structuring human interaction. Markets with institutions.
Stable and predictable outcomes reduce the costs of measuring and enforcing property rights.
This encourages long-term investment. The direct consequence for the topic of this article is:
Investors react not only to the level of stringency of the rules, but above all to their stability.
A demanding, yet well-known system can be incorporated into economic calculations, whereas a
A system that changes frequently, or whose scope depends on pending court decisions,
It imposes a risk premium on the investor, which translates into a lower appetite for, or demand for, a higher return.
higher.

International business literature adds the idea that operating outside one's country of origin imposes
specific costs. Zaheer (1995) termed this phenomenon the disadvantage of being a foreigner, or
liability of foreignness, and demonstrated, based on an empirical study with foreign exchange trading rooms,
that foreign companies face additional costs arising from a lack of familiarity with the
The challenges include the local environment, discrimination by local agents, and the absence of networking opportunities.
Dunning (1988), in formulating the eclectic paradigm of international production, had already argued that
Investing abroad is only justified when the investor has inherent advantages that allow them to...
to compensate for these disadvantages. Transposed to the real estate market, the theory suggests that the
Successful foreign capital is that which brings with it technical knowledge and access to infrastructure.
appropriate legal services and reliable local partners.
Finally, La Porta et al. (1998) showed that the quality of legal protection afforded to
Investors vary significantly between countries and are related to the legal traditions of each.
One, with more intense protection in common law systems. The United States figures in this...
This framework, among the jurisdictions with the greatest formal protection, helps to explain its historical attractiveness.
The combination of these contributions allows us to formulate the premise that guides the following sections.
The contraction of foreign capital does not mean that the North American market has lost its...
Institutional quality is important, but the cost of accessing that quality has increased for those coming from outside the institution.
The more complex, fragmented, and unstable the rules applicable to foreigners become, the greater
It is the economic value of reducing information asymmetry and transaction costs through
Due diligence, contract structuring, and regulatory compliance.

4. Institutional Transparency and the Retraction of Foreign Capital

The relationship between institutional quality and real estate capital flows has been empirically tested by
several studies. Lieser and Groh (2014), based on panel data from 47 countries between 2000 and 2009,

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They found that economic growth, rapid urbanization, and favorable demographics are...
associated with the largest volume of international commercial real estate investment, while the lack of
transparency of the legal framework, the administrative burdens imposed on real estate activity, the
Sociocultural challenges and political instability are associated with smaller allocations. The result is
It is relevant because it places the legal environment on the same level as classic economic variables.
In other words, international investors don't choose a destination solely based on expected returns.
but also because of the confidence that local law will allow the acquisition, exploitation and disposal of the asset without
surprises that could undermine that return.

Similarly, Eichholtz, Gugler, and Kok (2011) examined the relationship between transparency,
Market integration and the cost of international real estate investment, a topic that links
directly impacts the quality of information available in each country at the cost actually borne by
Those who invest from abroad. This type of evidence supports the construction of indicators.
Comparative tools, such as the Global Real Estate Transparency Index, compiled by JLL. In the edition of
In 2026, which assessed 88 countries and 146 urban markets, the United States appears in fourth position.
behind the United Kingdom, France and Australia, within the group of markets classified as
highly transparent (JONES LANG LASALLE, 2026). This data introduces an apparent paradox,
because foreign capital retreated precisely from one of the most transparent markets in the world, which
It requires distinguishing between informational transparency and regulatory predictability.

The residential market figures illustrate the extent of the contraction. As systematized in
Chart 1: The volume of purchases attributed to foreigners by NAR fell from US$153 billion in
period ending in March 2017 to US$121 billion in 2018, US$77.9 billion in 2019 and
US$74 billion in 2020. In 2021 the value decreased to US$54.4 billion, rising slightly to US$59 billion.
billions in 2022, fell again to US$53.3 billion in 2023 and reached US$42 billion in 2024.
In its 2025 report, the entity recorded US$56 billion and 78,100 properties acquired, the first...
Annual increase in the number of units since 2017. Florida remained the top destination.
with 21% of purchases, and 47% of foreign buyers paid in cash, compared to 28% of the total.
buyers in the country (NATIONAL ASSOCIATION OF REALTORS, 2025).

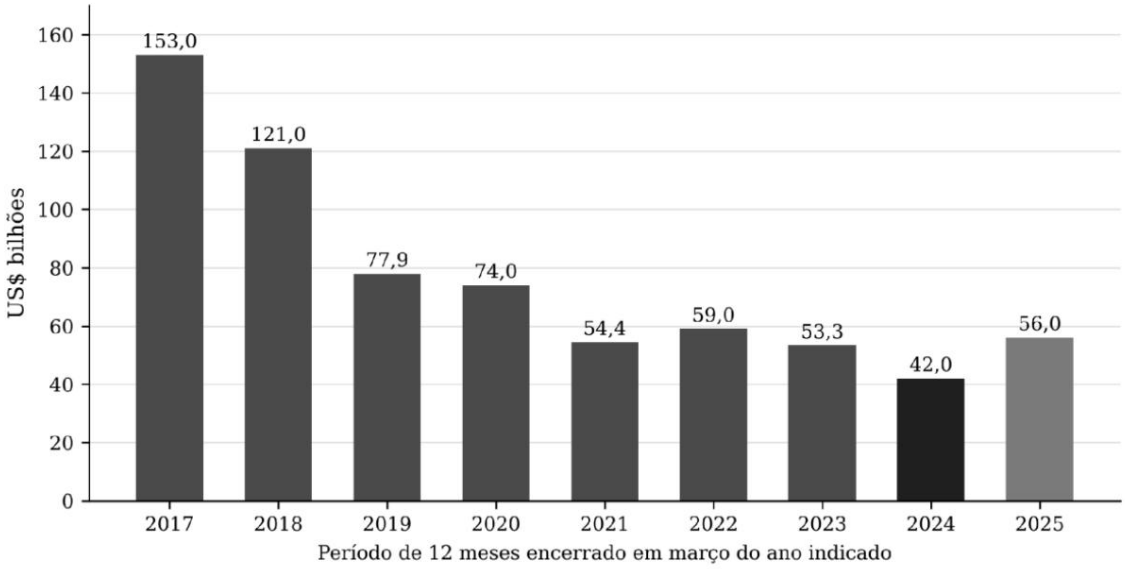
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Chart 1 – Volume of residential property purchases by foreigners in the United States

(US$ billions)



Source: compiled by the author using data from the National Association of Realtors (2018; 2019; 2020; 2021; 2022; 2023; 2024; 2025). The figures refer to twelve-month periods ending in March and include resident and non-resident foreign buyers.

In the commercial segment, the movement was similar. MSCI data released by Long (2024)
They indicate that foreign investment in commercial real estate in the United States totaled US$5
billions in the first quarter of 2024, compared to US$15 billion in the same period of 2023, the lowest.
Value since the third quarter of 2011. The participation of international investors in the volume.
The total reached 6%, marking only the second time since 2009 that this rate has fallen below 7%.
Of note, according to the same source, is the increased share of office space among the assets acquired by
foreigners, which increased from 10% at the end of 2022 to 28% at the end of the first quarter of 2024.
This data suggests that some of the remaining capital has begun to seek depreciated assets, in line with
an opportunistic strategy that depends, more than ever, on careful legal assessment of
Title, permitted use, and feasibility of conversion.
The literature also warns that foreign demand is neither homogeneous nor stable. Badarinza and
Ramadorai (2018), in studying the London market, demonstrated that risk shocks in
The countries of origin of investors significantly and persistently affect property prices.
in the regions preferred by these buyers, in a pattern associated with the search for refuge.
secure regarding immigration. The lesson for the American case is that foreign capital responds
to the conditions of the country of origin and the country of destination at the same time. If the destination starts issuing
Despite signs of regulatory instability, even with a high level of transparency, the investor who was seeking
A refuge can simply redirect its resources. This sensitivity makes predictability

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Legal considerations are a central element of attractiveness, and not an operational detail to be dealt with only in the...
closing the deal.

5. FEDERAL ARCHITECTURE: TAXATION AND NATIONAL SECURITY

The first pillar of federal regulations applicable to foreign buyers is Foreign Investment in
The Real Property Tax Act, enacted in 1980 (United States, 1980). Prior to this, non-residents...
As a rule, he could sell US real estate without paying capital gains tax in the United States.
United States. The law now addresses the gain resulting from the sale of shares in real estate located
in the country as income effectively connected to American commercial activity, which subjects the
Foreigners are subject to federal taxation on this gain, pursuant to section 897 of the Internal Revenue Code.
To ensure collection, section 1445 imposes on the purchaser the obligation to retain part of the gross value.
of the operation, the percentage increased from 10% to 15% by the Protecting Americans from Tax Hikes Act.
2015 (UNITED STATES, 2015), which also created differentiated treatment for pension funds.
Skilled foreigners. In practice, FIRPTA makes the exit structure so important.
Regarding the input structure.
One of the traditional ways to mitigate the effects of FIRPTA is through investment via vehicles.
domestically controlled qualified investment funds, especially real estate funds
structured as REITs. If less than 50% of the value of the shares of these vehicles is held, directly or
Indirectly, by foreigners during the trial period, the sale of shares is not subject to
to the FIRPTA regime. In April 2024, the Treasury published TD 9992, which began requiring the
analysis through certain unlisted domestic corporations, when more than 50% of their
capital belonging to foreigners, for the purposes of assessing domestic control. The rule provided for a
ten-year transition regime for pre-existing structures that meet certain requirements.
(UNITED STATES, 2024a). The change altered established market calculations and required revision.
of ongoing investment structures.

The second sensitive point is the federal inheritance tax. With the enactment of Public Law
119-21, as of July 2025 (UNITED STATES, 2025), the exemption applicable to citizens and residents
The US tax was set at $15 million per person starting in 2026, with updates by
inflation. For non-residents, however, the unified credit provided for in section 2102 of the Internal Regulations applies.
In practice, the Revenue Code only provides a $60,000 tax exemption on assets located...
in the United States, which includes directly held real estate, subject to progressive tax rates that
They reach 40%. The situation for Brazilian investors is aggravated by the absence of a treaty between Brazil and
In the United States, to avoid double taxation, whether on income or inheritance, a significant loophole exists.

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study of the Brazilian network of tax treaties (XAVIER, 2015). This asymmetry transforms the choice between direct ownership and ownership through entities in equity decision-making first order.

The third pillar is the control of foreign investment for reasons of national security. The Foreign Investment Risk Review Modernization Act of 2018 (United States, 2018) expanded CFIUS's competence to achieve certain real estate transactions, even if they do not involve the acquisition of businesses, when the property is located in ports, airports or nearby areas. of sensitive military installations. The discipline was regulated in part 802 of title 31 of the Code. of Federal Regulations, in effect since February 2020. In November 2024, the Treasury published The final rule added approximately 60 military installations to the list, some of which have a range. from one mile and part with a radius of up to one hundred miles, effective from December 9, 2024. (UNITED STATES, 2024b). As a result, a larger portion of the territory began to require verification. Preliminary location check before any purchase by a foreigner.

The episode involving the so-called Section 899 highlights the volatility of the federal environment. During the legislative process... Regarding the bill that resulted in Public Law 119-21, the House of Representatives approved a provision that... This would raise taxes on investors from countries considered to have discriminatory tax systems. against the United States. Following an agreement reached between the US government and the others

The provision, which was removed from the final text of the G7 countries in June 2025, was removed from the final text. Although the measure did not have Once it came into effect, its processing was enough to lead funds and investors to revise their projections. and structures. The combination of these elements shows that taxation and federal control form a a demanding system, but technically manageable, provided the investor incorporates it from the outset. analysis of the exit regime, succession and location of the asset, and continuous monitoring of the legislative proposals under discussion.

6. FEDERALISM AND FRAGMENTATION: STATE RESTRICTIONS ON PROPERTY OWNED BY FOREIGNERS

While the federal sphere has become more demanding, the state sphere has become more fragmented. The limitation Foreign ownership of land is nothing new in American history, but it has taken on a new meaning. A boost from 2023 onwards, driven primarily by concerns about China and other countries. considered adversaries. According to a survey by the National Agricultural Law Center (2025), twenty And eight states had, by the end of 2025, some form of restriction of this nature. Only in that one. Last year, Kentucky, Texas, and West Virginia adopted the rules for the first time, while Arkansas, Georgia, Idaho, Nebraska, Tennessee, and Utah have changed existing laws. The regulations vary as to

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depending on the countries covered, the type of property protected, the exceptions allowed, and the sanctions, what prevents
The investor must work with a single rule for the entire country.

Florida, the main destination for foreign buyers of residential real estate, is the prime example.
discussed. Senate Bill 264, signed into law in May 2023 and published as Chapter 2023-33 of the
Laws of Florida, which went into effect on July 1, 2023, prohibit individuals and entities from...
linked to countries of concern, including China, Russia, Iran, North Korea, Cuba, Syria and the
under the Maduro regime in Venezuela, acquire agricultural land or real estate located up to ten miles from
Military or critical infrastructure installations, with even stricter rules for individuals.
domiciled in China. In addition, it created registration duties for pre-existing holdings and passed
requiring buyers to provide a sworn statement that they do not fall under the categories of
sealing (FLORIDA, 2023). This last requirement, in practice, applies to all buyers,
including those who are not foreigners.

The constitutionality of the law was challenged in Shen v. Simpson. In an analysis published by
Congressional Research Service, Jayaram (2024) recorded that, in February 2024, the Court of
Appeals from the Eleventh Circuit partially suspended the application of the rule in relation to
two authors, considering the thesis that federal legislation on investment is likely to succeed
Foreign law would prevail over parts of state law. However, on November 4, 2025, the same
The court (UNITED STATES, 2025c), by a majority of two votes to one, held that the authors did not
They had the legitimacy to challenge the purchase ban and had not demonstrated a likelihood of success.
success in the allegations of constitutional violation and federal preemption against the registration duties and
of the declaration. The result kept the law in effect and signaled that legal action is unlikely.
It will serve as a quick solution for the affected investor.

Texas followed a similar path. Senate Bill 17, signed into law on June 20, 2025, and in
Effective since September 1st of the same year, it prohibits governments, individuals, and entities from designated countries,
like China, Iran, North Korea and Russia, to acquire any rights over real estate in the state,
including certain locations. The designation is based on community threat assessments.
US intelligence and can be expanded by the governor. Oversight is the responsibility of
Attorney General, and the sanctions include the compulsory sale of the property, civil fines of at least
less than US$250,000 or 50% of the market value of the asset and criminal liability in case of
conscious violation (TEXAS, 2025; NATIONAL AGRICULTURAL LAW CENTER, 2025). A
The combination between Florida and Texas, which are among the top three destinations for shoppers.
Foreigners, it gives state laws a much greater economic weight than the state count.
suggests.

For Brazilian investors, the direct effect of these regulations is limited, as Brazil is not among the...

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countries designated in the aforementioned laws. The indirect effects, however, are relevant. Structures of Collective investments that bring together investors of different nationalities can be achieved when If there is involvement of individuals linked to countries of concern, this requires verification of the chain of custody. Complete corporate structure prior to acquisition. Disclosure duties increase liability. buyer documentation, and the risk of forced sale affects asset liquidity in certain regions. State fragmentation, therefore, shifts due diligence to a more specific level. broad, which needs to combine the traditional title examination with mapping the location of property in relation to sensitive installations and with the identification of all ultimate beneficiaries of the operation.

7. BENEFICIAL OWNER, MONEY LAUNDERING PREVENTION AND Cross-border compliance

The third area of regulatory tightening concerns transparency regarding who actually... controls the properties. For a long time, the ease of forming liability companies A limited company without publicly identifying its partners has made the US real estate market a target. This is a recurring concern for authorities regarding the prevention of money laundering. Since 2016, the Financial Crimes Enforcement Network (FinCEN) uses geographic scope orders to demand that title insurance companies identify the ultimate beneficial owners of legal entities that They acquire residential properties without bank financing in certain regions. These orders, Periodically renewed, they reached areas of great interest to foreigners, such as counties. from Florida and New York City, and were the embryo of broader regulatory initiatives on the sector.

The Corporate Transparency Act, passed in early 2021 as part of the defense authorization law. National Registry of Fiscal Year 2021 (United States, 2021) established a federal registry of ultimate beneficial owners of companies. After a period of legal disputes and postponements, FinCEN published, in March 2025, a provisional rule that exempted companies incorporated in the States United States and the American people of the duty to report, maintaining the obligation only for entities incorporated abroad and registered to operate in the country (UNITED STATES, 2025a). The result is an asymmetrical regime, in which the foreign investor who uses a vehicle constituted Outside the United States, it remains subject to duties that no longer fall on investors. Domestic. The choice of jurisdiction for vehicle incorporation has therefore also become a a compliance decision, and not just a tax decision.

In the residential market, FinCEN issued a rule in August 2024 that would require certain...

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Professionals involved in closing deals to report residential property transfers.
No funding for legal entities and trusts, with detailed data on the ultimate beneficiaries.
(UNITED STATES, 2024c). The effective date, initially scheduled for December 2025, was postponed.
for March 2026. On March 19, 2026, in the case Flowers Title Companies, LLC v. Bessent
(UNITED STATES, 2026), the Federal District Court for the Eastern District of Texas annulled
to fully comply with the rule, understanding that FinCEN exceeded the authorization granted by the Bank.
Secrecy Act. The decision does not end the debate, as the agency itself may appeal or amend regulations.
more restrictive, but clearly illustrates the degree of uncertainty surrounding transparency requirements in
sector, with direct effects on the planning of operations structured through entities.

On the Brazilian side, investors also face a changing regulatory environment. The Law
Law No. 14,754, of December 12, 2023, amended the taxation of financial investments abroad, from
entities controlled by individuals residing in Brazil and trusts, with effects on structures
frequently used to hold real estate in the United States (BRAZIL, 2023). Add to that the
agreement for the implementation of FATCA, enacted by Decree No. 8,506 of 2015, which
institutionalized the exchange of financial information between the two countries (BRAZIL, 2015).
Tôrres (2001) already warned that the plurality of tax claims on the same income requires
Technical solutions that reconcile the systems involved. In the absence of a treaty, this falls to planning.
legal frameworks aim to prevent an efficient tax structure in a country from generating excessive taxation or non-compliance with regulations.
ancillary duties on the other.

This set of requirements modifies the profile of the investor capable of operating safely in
North American market. Customer knowledge procedures, verification of the origin of
Resources, sanctions screening, and identification of ultimate beneficiaries are no longer mere formalities.
ancillary and began to condition access to institutional developers and financial institutions.
and securities insurers. In theoretical terms, this represents an increase in transaction costs.
described by Williamson (1985), but also a signaling opportunity. The investor who
It presents complete documentation and a transparent structure, reducing information asymmetry on the other side.
from its North American counterpart and becomes a preferred partner in a market where the
Compliance has become a selection factor. Legal certainty, here, operates in both directions.
protecting the investor and making it trustworthy for the recipient.

8 Mixed-Use Development, Urban Revitalization, and the Window of Opportunity

The decline in foreign capital is occurring at a time when several North American cities
They seek resources to transform underutilized areas. Advocating for diversity of uses as a condition.

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The concept of urban vitality dates back to Jacobs (1961), who criticized planning based on separation.
rigid in its definition of functions and argued that neighborhoods with combined housing, commerce, and work generate
Constant circulation of people, security, and economic dynamism. The idea was incorporated by
contemporary urban planning, but its implementation has revealed difficulties. Grant (2002), to
Analyzing the Canadian experience showed that mixed use has become established as a principle of
planning, but encounters practical obstacles related to market preferences and tax regimes.
zoning and the complexity of financing and managing ventures that combine different
functions within the same project.

From a demand perspective, Leinberger (2008) identified a preference in the United States.
growing demand for walkable urban environments, where housing, services, and work meet.
nearby, in contrast to the dominant suburban model of the 20th century. The pandemic added
a new element to this picture. Gupta, Mittal and Van Nieuwerburgh (2022) estimated losses
Significant increases in the value of New York's office stock due to the spread of remote work.
and warned of the effects of this devaluation on municipal finances. The result is...
existence of buildings and blocks with low occupancy in well-served central areas
infrastructure, which can be converted into mixed-use developments, provided they overcome
zoning barriers, technical feasibility issues, and financial structuring challenges.

The main recent federal instrument for stimulating investment in economically vulnerable areas.
Depressed areas are the opportunity zones created by the Tax Cuts and Jobs Act of 2017 (STATES
(UNITED, 2017). The program grants deferral and reduction of taxation on capital gains.
reinvested in qualified funds that invest resources in these areas. The evidence regarding their
Initial effects, however, are modest. Freedman, Khanna, and Neumark (2023) found little or no impact.
no evidence of positive effects on employment, income and poverty among residents of the areas in
first period of validity. Chen, Glaeser and Wessel (2023) concluded that the designation does not
produced a significant effect on residential property prices, preventing increases exceeding
Half a percentage point. These findings indicate that tax incentives alone are not enough.
To attract capital, well-structured projects are necessary.

Public Law 119-21 (United States, 2025b) made the program permanent and amended its
Logic starting in 2027, with a five-year deferral from each investment, increasing
10% on the calculation basis for investments held for that period and an expanded benefit for funds.
focused on rural areas. New zone designations may be made by the states starting in July.
from 2026. For the foreign investor, it should be noted that the benefit presupposes the existence of a gain.
of capital subject to US taxation, which restricts its scope to those who already have income.
taxable in the United States. In parallel, the EB-5 Reform and Integrity Act of 2022 (STATES)

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(UNITED, 2022) set the minimum investment in targeted employment areas at US$800,000,
reserved portions of visas for rural, high-unemployment, and infrastructure projects and reauthorized
The program of regional centers will run until September 2027, creating another bridge between foreign capital.
and regions lacking investment.

The convergence of these factors defines the window of opportunity examined in this article. On one hand,
The reduced presence of foreign capital decreases competition for assets and increases the power of
Negotiations are being conducted by those who remain in the market, especially in the face of depreciated commercial properties.
On the other hand, cities and developers need financial partners to make the conversion viable.
Underutilized areas in mixed-use developments. This window of opportunity, however, can only be exploited by
whoever manages to simultaneously pass the title and zoning analysis, the FIRPTA regime,
Succession planning, CFIUS control, state restrictions, and ultimate beneficial owner requirements.
In Dunning's terms (1988), the inherent advantage that compensates for the disadvantage of being a foreigner leaves
It's no longer just about capital, but about the ability to legally structure the operation in a certain way.
complete and predictable.

CONCLUSION

The study began with the observation that foreign capital has reduced its presence in the market.
US real estate has consistently grown since 2017, both in the residential segment.
both commercially and commercially. NAR data shows a drop from $153 billion to $42 billion in
seven years, with partial recovery in 2025, and MSCI data indicates that participation
Foreign investment in trade reached its lowest level in more than a century at the beginning of 2024.
decade. The contraction, therefore, is not episodic, but structural, and spans distinct cycles of interest rates and...
exchange rates, which reinforces the need to seek explanations that also consider the environment.
legal challenges faced by foreign buyers.

The theoretical review allowed us to understand this movement beyond mere explanations.
macroeconomics. The contributions of Akerlof, Coase, Williamson, and North show that the decision
The cost of investing depends on the cost of obtaining information, negotiating, formalizing, and enforcing rights.
property. The literature on the disadvantage of being a foreigner, developed by Zaheer and
Linked to the Dunning paradigm, it explains why these costs weigh more heavily on the investor than
It comes from outside, and only those with inherent advantages are able to overcome them. This basis
Theoretically, this approach allowed legal certainty to be treated as an economic variable, and not just as a concern.
formal.

Empirical analysis revealed a significant paradox. The United States remains among the markets

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The most transparent real estate companies in the world, according to the JLL index, and yet they still lost. participation of international capital. The proposed explanation is that informational transparency and Regulatory predictability and predictability are distinct attributes. A market can offer abundant data and Reliable records, while at the same time frequently changing the rules that define who can buy, how it should be structured, and how much they will pay upon exiting. It is this instability, more than the lack of... information that makes access more expensive for international investors.

At the federal level, FIRPTA, the changes introduced by TD 9992, the succession treatment of Non-resident and the expansion of CFIUS's reach make up a demanding, but technically sound system. manageable. The difference between the $15 million exemption applicable to a U.S. citizen and The US$60,000 applicable to foreigners, coupled with the absence of a treaty with Brazil, demonstrates that Decisions made at the time of purchase directly impact the assets transferred to the owners. subsequent generations. The episode of section 899 also showed that proposals that were not approved also They have an effect on investment decisions.

At the state level, the expansion of laws restricting property ownership by foreigners, which reached twenty-eight states by the end of 2025 have fragmented the market. The cases of Florida and Texas, Confirmed by case law to date, these norms show that they have economic weight. Significant, as they reach the most sought-after destinations. Even when the investor's country of origin... If this is not achieved, the reporting duties and verification of the corporate chain have become steps. mandatory. The location of the property in relation to sensitive installations also became, An indispensable item for preliminary analysis.

The rules on beneficial ownership and money laundering prevention added another layer of... Uncertainty, marked by postponements, provisional rules, and judicial annulments. The maintenance of The requirement for reporting only to entities incorporated abroad has created an asymmetry that falls on... specifically regarding foreign investors, while changes to Brazilian legislation regarding Foreign entities and trusts require ongoing coordination between the two legal systems.

In this scenario, the ability to demonstrate the legitimate origin of resources and a transparent structure has become... credentials for negotiating with institutional partners.

The initial hypothesis was confirmed in its essential terms. The increased regulatory density raised the Transaction costs drove away less prepared capital, but it also reduced competition by assets and created space for investors capable of converting legal knowledge into an advantage. competitive. In a context of depreciated offices, underutilized central areas and Instruments such as opportunity zones and the EB-5 program, mixed-use developments They emerge as a promising destination for this capital, provided they are accompanied by proper structuring. legal framework capable of integrating the different normative layers analyzed.

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It can be concluded that legal certainty has ceased to be an accessory cost of the operation and has become an integral part of it.
the very core of the international real estate investment strategy in the United States. Due
extended due diligence, appropriate corporate and succession structuring, location verification and
Final beneficiaries and continuous monitoring of regulatory changes are, today, conditions for
market access. Future research could quantitatively measure the effect of each.
Regulatory innovation regarding capital flows and examining the performance of mixed-use projects.
funded by foreign investors following the new phase of the opportunity zones program.

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