



Buying property in the United States offers many opportunities for foreign nationals. However, the way you choose to hold title can significantly impact your tax obligations. Understanding these options and the tax consequences of each one before you purchase can save substantial money and prevent complications later.

### **Why Ownership Structure Matters**

When you buy U.S. property as a foreign national, you face two main tax concerns. First, you'll pay income tax when you sell the property. Second, your estate may owe taxes if you pass away while still owning it.

Each ownership method handles these taxes differently.

### **Making Changes After Purchase**

You can usually change how you hold title after buying property. However, making these changes later often triggers taxes and fees that you could have avoided by planning ahead.

### Using Your Own Name

Many, if not most, foreign buyers simply put the property in their personal name.

This approach offers the lowest income tax rate when you sell. If you hold the property for more than twelve months, under current tax law you'll pay a maximum 20% tax on your capital gains.

The downside is if you die while owning the property. Estate taxes begin at 18% and climb to 40% for properties worth \$1 million or more. For Non-U.S. tax residents these taxes apply to properties valued above \$60,000. The government calculates the tax based on the property's market value when you die, not what you paid for it.

You must pay these taxes within nine months. Missing this deadline triggers penalties and interest charges.

For example, a property worth \$500,000 at death would generate approximately \$135,400\* in estate taxes. This is based on the official IRS table for amounts over \$250,000 but not over \$500,000, the tax is \$70,800 plus 34% of the excess over \$250,000.

Unless you are renting the real estate or have other reportable U.S. income, no annual tax return is required when property is owned in your personal name.

### Using a U.S. Corporation

Foreign nationals can purchase property through a U.S. corporation. This structure changes the tax calculation. Currently corporations pay a flat 21% federal tax rate on all income, including property sales. There's no special rate for long-term ownership.

Something else to consider with corporate ownership is that there may also be state or other taxes owed. For example, in Florida, corporations also pay 5.5% state tax on profits exceeding \$50,000. This brings the total income tax rate to roughly 26.5%.

The potential benefit of titling property in a U.S. corporation involves estate planning. Some countries have income tax treaties with the United States. These treaties may exempt corporate shares from estate taxes. Residents of the United Kingdom and Germany, for instance, may avoid estate taxes entirely by using this structure.

When using a U.S. corporation there is an annual tax filing requirement, whether or not the property is rented.

### Using a Foreign Corporation

A corporation formed outside the United States faces the same income tax rates as a U.S. corporation when selling property. However, it can offer a significant estate tax advantage.

Most foreign nationals who hold property through a foreign corporation avoid U.S. estate taxes completely when they die. This makes foreign corporations attractive for estate planning purposes.

When using a foreign corporation there is an annual tax filing requirement only if there is a reportable transaction, U.S. income, or rental activity.

### Using a U.S. Limited Liability Companies

LLCs have grown popular among foreign property buyers because they offer flexibility. How an LLC is taxed depends on its structure. There are default rules based on the number of owners and also elections that can be made to change how the entity is taxed.

An LLC with one member is considered a disregarded entity for U.S. tax purposes. It gets treated as if it doesn't exist. The IRS looks directly at the owner and applies the tax rules that would apply to that person (e.g. individual, corporate, trust). You get the same income tax rates and face the same estate tax exposure. The LLC provides legal protection, but doesn't change your tax situation. You should carefully consider use of a U.S. LLC that is a disregarded entity as a foreign national as there are special filing requirements for U.S. disregarded entities owned by a foreign person. The required disclosure form carries a \$25,000 per form per year penalty for failure to comply with filing requirements.

An LLC with multiple members typically gets taxed as a partnership.

### Other ownership options

U.S. real estate can be owned in a foreign or domestic partnership or trust. These structures should be considered carefully as they have more complex rules and effects.

### Important Considerations

The right choice depends on your specific situation. Consider factors like:

- Your country of residence and any tax treaties (income and/or estate) it has with the U.S.
- The property's value
- How long you plan to hold it
- Your estate planning goals
- Your overall financial picture

### Taking Action

Making the right decision about property ownership structure requires careful proactive planning. You should work with qualified tax professionals who understand both U.S. tax law and international taxation. Address these questions before you close on your purchase, not after.

The few hours you spend on tax planning now can save your family tens or hundreds of thousands of dollars later.

### **Author's Notes:**

There are other planning opportunities related to the ownership of U.S. real estate. Each situation is unique.

This article is not intended to be tax advice.

This information covers U.S. tax rules only. Your home country may have its own tax requirements for foreign property ownership. These may result in different tax treatment than U.S. rules apply to the ownership. Consult with a tax advisor in your country familiar with cross border activity before finalizing your ownership structure.

Real estate transactions involving foreign sellers present unique complexities. Each situation involves different property values, ownership structures, gain calculations, and timing and fact pattern considerations that affect the strategy that is right for you.

Consulting with tax professionals who regularly handle international property transactions helps ensure you understand your specific obligations and exploring available options that can help you maximize your proceeds and minimize delays in receiving your funds.

I am happy to advise you on the options available to you in taking title to your U.S. real estate.

### **About the author:**

David A Cumberland, CPA CGMA has presented at the local, state, and national level. David has authored articles intended for both the taxpayer and the tax professional. He is vice chair of the FICPA International tax committee and founder of Cumberland CPA & Co. which serves clients worldwide. He has published in the FICPA's Florida CPA Today magazine and produces client-based tax articles in English and Spanish to educate both current and prospective clients and advisors to those clients. He primarily practices in the area of inbound international tax work covering both individual and business tax preparation and consulting. Fluent in Spanish, his emphasis is working with international clients or clients with international considerations. David brings unique value and perspective to advising clients as a CPA as he has more than two decades of operational management experience in business in addition to a technical tax background. Having retired as lead shareholder of the International Tax Department of one of the largest independent certified public accounting firms in Southwest Florida his focus now is on continuing to serve clients he is passionate about in a boutique setting.

For full bio please click here or go to [www.CumberlandCPA.com/about/](http://www.CumberlandCPA.com/about/)

Questions or Inquiries can be sent to: [ARTICLES@CumberlandCPA.com](mailto:ARTICLES@CumberlandCPA.com)