



# Foreign Real Estate Investor's Guide

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SIMPLE PLANNING CAN SAVE A FOREIGN REAL ESTATE PURCHASER MILLIONS OF DOLLARS!

Things to keep in mind:

- **Analyze the financial implications** of the purchase – will the property be used by the foreign purchaser as a home, as a rental property, or both?
- **Hire attorneys familiar with the intricacies of NYC real estate transactions and U.S. estate and income tax planning** to make sure that the foreign buyer's rights are protected and to structure the transactions in a tax efficient manner.



Absent proper planning, real estate purchased by a foreign investor could cost him or her millions of dollars more than the purchase price! Before a foreign investor buys real estate here in the United States, he or she should consider structuring the transaction in such a way to **avoid estate and gift taxes and income taxes** in connection with U.S. real estate and other assets. Generally, if a nonresident alien (an individual who is not a citizen of, and is not domiciled in, the U.S., a "foreign purchaser") dies owning U.S. assets (like real estate or direct ownership interests in U.S. companies) that have a U.S. situs (or jurisdiction), those assets could be **taxed at up to a whopping 47% rate for estate tax purposes** upon the owner's death. With simple advanced planning and structuring the asset purchases utilizing off-shore entities, a **foreign purchaser can avoid U.S. estate taxes** on such assets and real property. Depending on the country of residence, this same structure can also **minimize U.S. income tax on the rental income and gains** derived from the sale of

the assets and real property.

One **preferred structure** to accomplish the above goals is to have the foreign purchaser establish a holding corporation outside the U.S. Preferably, this holding company should be established in the country of residency (assuming such country has an income tax treaty with the U.S. – income tax treaties generally reduce the U.S. withholding tax on dividends, royalties, rents, and other similar revenue streams). Otherwise, the holding company could be established in a country with favorable tax rules, such as the Cayman Islands, the Bahamas or Bermuda. Next, the newly established foreign holding company establishes a U.S. subsidiary through which U.S. real estate or other assets would be purchased and held. The end result is a foreign holding company being the parent corporation to U.S. subsidiaries holding assets in the U.S. – the foreign purchaser merely owns stock in the foreign holding corporation. Upon the death of the foreign purchaser, there would be **no estate tax on the real estate and other assets** held by the U.S. subsidiary since the foreign purchaser only owned shares of a foreign corporation. **Shares of a foreign corporation are not taxed for U.S. estate tax purposes!**

If the foreign purchaser is planning on acquiring several properties in the U.S., it is advisable to purchase each property in a separate U.S. subsidi-

ary to limit the liability of each property solely to that property and to avoid (1) U.S. income tax attributable to business operations or real estate investments in the U.S. conducted directly by foreign corporations and (2) U.S. income tax payable on the sale of U.S. real estate with respect to the proceeds that flow to the foreign parent corporation.

**Further estate planning –** Depending on the country of residency, a foreign purchaser should consider placing a revocable foreign trust on top of the foreign holding corporation. By placing a revocable foreign trust between himself or herself and the foreign holding corporation, a foreign purchaser can efficiently handle some of its global estate planning since the provisions of the revocable foreign trust specify what should happen to the shares of the foreign holding corporation upon the death of the foreign purchaser. The foreign purchaser should have the entire structure carefully reviewed by a U.S. tax and estate attorney to ensure that the foreign revocable trust does not have adverse U.S. tax consequences.

**Timing of the establishment and funding of the legal entities is critical.** The legal entities should be established and funded in the following order: the foreign revocable trust (if applicable); the foreign holding corporation; and each U.S. subsidiary, as applicable, which is eventually used to purchase the property (see diagram on page 2).

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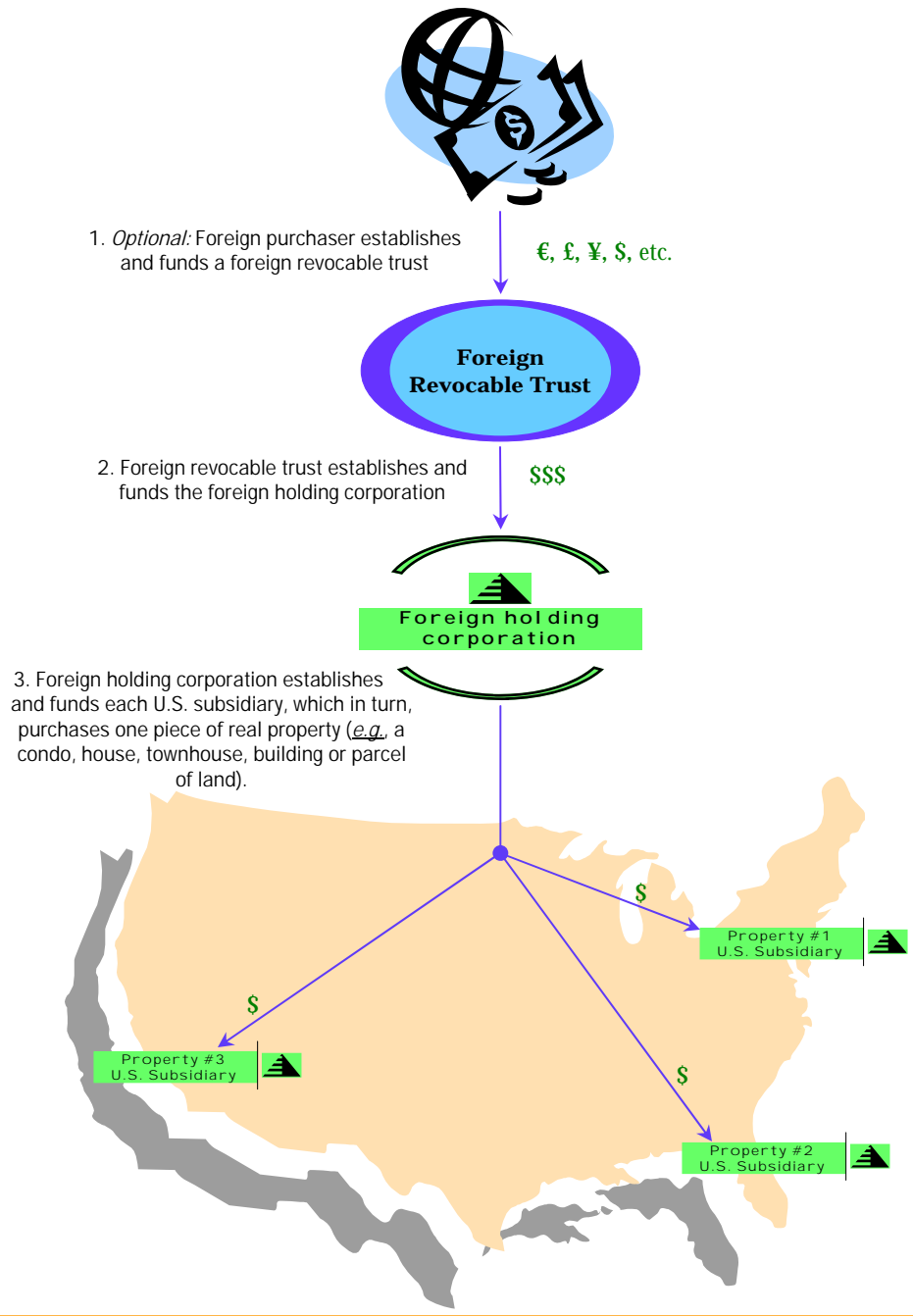
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Example of a Structure of Real Estate Purchases by a Foreign Investor



Craig Delsack, Esq., is the principal attorney of Law Offices of Craig Delsack, LLC. The firm is experienced in the intricacies of purchases, sales and financings of commercial and residential properties, condos and co-ops; leasing and subleasing of commercial, office and retail space; and formation of special purpose entities for real estate investing and financing (such as corporations and limited liability companies). Mr. Delsack is also a real estate mentor-expert volunteer for The Association of the Bar of the City of New York's "September 11th Legal Initiative" assisting attorneys representing clients needing real estate advice in connection with the aftermath of 9/11. The firm is a transaction and business oriented law firm and brings extensive business and legal experience to bear on behalf of its clients. The firm is highly computerized and leverages that technology for cost-effective representation of its clients. The firm also handles general corporate, technology and licensing related matters. The firm works with a broad range of individuals and business entities, including general counsels, Fortune 500 companies and start-ups.