



# E-2 Visas

*A guide for real estate companies*



## Introduction

Given the strength and stability of the U.S. economy, it is not surprising that more foreign investors<sup>1</sup> are selecting real estate business models to secure E-2 visas as a method of obtaining immigration status in the U.S. The U.S. permits real estate companies to utilize the E-2 visa strategy, but companies must carefully structure their models to achieve success. This guide provides foreign investors in the real estate industry the general components of U.S. E-2 immigration law.

In addition to strategic business considerations to secure profitability, foreign investors in the real estate industry have to consider such factors as corporate structuring, nature of the capital investment, amount of investment required, and management of the business model. Foreign investors launching and operating real estate companies should plan for the following components of the law as they evaluate their strategic plans.

### Corporate Structuring

The U.S. allows a multitude of corporate structures to secure the E-2 visa. Foreign investors may select to acquire assets and operate the real estate enterprise through a U.S. based corporate entity or via a foreign corporate structure. The key requirement is to establish that at least 50 percent of the business is owned by nationals of the treaty country.<sup>2</sup>

In the E-2 visa context for most real estate transactions, VERDIN advises foreign nationals to employ two different legal entities: one to acquire the real estate assets; and the other to operate and manage the enterprise. Generally for several reasons, the management/operational company will be used to apply for the E-2 visa. Under this scenario, 50 percent of the management/operational company will need to be owned by nationals of the treaty country.

### Nature of the capital investment

Foreign investors must demonstrate that they have possession and control of the capital investment. On this issue the U.S. government looks to the legitimate source of the funds. Accordingly, foreign investors must show they acquired the capital through some legal means

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<sup>1</sup> Not all foreign nationals are eligible for E2 visas. To qualify for an E-2 investor visa, the foreign investor must be a national of a treaty country. The list of eligible countries are found in the US State Department's website: <http://travel.state.gov/content/visas/en/fees/treaty.html>

<sup>2</sup> For a list of the treaty countries refer to footnote 1 above.



such as savings, disposition of property, inheritance, gifts, unsecured loans, or loans secured by personal assets, gaming, etc. The source of the capital does not have to be outside the U.S.

Thereafter, foreign investors must establish that the investment has been placed at risk and irrevocably committed with the purpose of generating a profit. Thus, foreign investors must not merely possess funds in an account, but instead should move forward with signed contracts and actual commitments.

However, foreign investors can receive credit toward their total investment for funds placed in an operational bank account for purposes of working capital.

Additionally, foreign investors will receive credit toward their investment for payments made for rent or leases, and other operational expenses such as labor, insurance, attorney fees, marketing, public relations, accounting & bookkeeping, IT support, and utilities.

### Amount of investment required

US law requires that the investment be substantial in proportion to the total cost of the business project. Thus, one strategy to meet the substantial investment requirement is to separate the real estate acquisition from the operational business. On the other hand, if a foreign investor acquires both the real estate assets and also intends to operate the enterprise with the same legal entity then the capital investment requirements would dramatically increase.

In an effort to reduce capital requirements in the real estate industry, foreign investors can select different types of operational models. Examples of operational models in the real estate industry include: design and remodeling services; property management; construction; demolition; landscaping; and, HVAC installation and maintenance.

Strategically, a real estate services company can provide services to the foreign investor's existing assets, as well as services to the open public. It is important to note that the foreign investor cannot simply hold passive real estate investments, but must instead operate a commercial enterprise.

In commercial real estate scenarios, foreign investors should likewise consider acquiring the commercial property with a separate entity, and then operating the enterprise through a separate entity that would apply for the E-2 visa. For example, in an acquisition of a multimillion dollar gas station a legal entity with multiple investors may acquire the underlying assets. Subsequently, a new legal entity owned by the foreign investor that desires the E-2 visa would create a lease agreement with the acquiring entity to manage the operations. This



strategy would substantially reduce the investment requirement from more than a million dollars to perhaps a \$100,000 to \$150,000 investment requirement.

In the residential real estate business models, service companies could possibly obtain an E-2 visa with minimal investments in the range of \$50,000 to \$100,000 USD.

### Management

A real estate company must plan for growth. The company must show the present or future capacity to generate profits to provide beyond just the foreign investor's personal needs. Thus, foreign investors must plan to create a management structure within the company.

Through detailed business planning foreign investors must establish a management structure whereby the foreign investor is in a position to develop and direct the enterprise, and others are to perform the skilled or unskilled labor of the business operations. However, with careful structuring, the enterprise would satisfy legal requirements with minimal additional employee support.

One overlooked advantage of the E-2 visa strategy is that the law allows the enterprise to petition for other foreign employees with the same nationality as the treaty employer. By leveraging this advantage the enterprise could petition for executives, supervisors, or other essential employees with special qualifications.



## Key advantages for E-2 visa real estate companies

- **Ability to engage in self-employment.** The E-2 visa is a unique strategy to seek lawful immigration status in the U.S. as a self-employed entrepreneur.
- **Opportunity for indefinite visa renewals.** The U.S. government does not place a maximum to the number of times an E-2 visa can be renewed.
- **No foreign employment history necessary.** Unlike other visas, there is no requirement to establish a history of employment with a foreign employer.
- **Access to US real estate market.** Foreign investors around the world desire to access the stability of the U.S. real estate market. The E-2 visa allows foreign investors the opportunity to penetrate the markets and exploit competitive advantages.
- **Rapid turnaround.** In most instances, an E-2 visa can be obtained within 30 to 90 days.
- **Family benefits.** Spouses of E-2 visas may obtain employment authorization documents and have the choice to work for the foreign investor or any other U.S. based company. In addition, children may attend school in the U.S.
- **Pathways to Residency.** Although an E-2 visa is a non-immigrant visa, there are pathways to residency with careful planning.

VERDIN is a specialist law firm in U.S. immigration law. We focus on representing foreign investors, helping them achieve their strategic objectives by assisting them in accessing U.S. markets.