Foreign Buyers: Purchasing a Property in South Africa

INTRODUCTION

There is significant foreign interest in the South African property market. We have identified some useful information for foreign purchasers to be aware of when considering purchasing property in South Africa.

Ownership of land is evidenced by a Deed of Transfer, which is issued to the owner of the property and signed by the Registrar of Deeds. In South Africa, there is a Deeds Registry in each major city and the head office is located in Pretoria. It is customary for the Seller to appoint the conveyancer, although the parties can contractually agree that the Purchaser appoint the conveyancer. The conveyancer will draft documents that both parties will need to sign. Thereafter, the conveyancer will prepare the Deed of Transfer and have it lodged at the Deeds Registry for registration. Ownership of the property passes on the day of registration of the Deed of Transfer.

Restrictions of foreigners owning property

Property can be owned by individuals or by a juristic entity such as a company, close corporation or trust. There are no restrictions on immovable property ownership by foreigners in South Africa except for the prohibition of ownership by illegal immigrants. Depending on the nature of the purchaser there may be additional procedural requirements for purchasing property in South Africa. For example:

1. If a foreign non-resident purchases property with the intention of residing in the property (for an extended period or indefinitely), a residency permit will have to be applied for.
2. Should a foreign non-resident own shares in a local company, without any other South African shareholders, it will be required to appoint a South African resident public officer.
3. If a juristic entity is registered in a foreign country it may be required to register in South Africa, should the juristic entity be required to do so in terms of South African legislation.

Securing the purchase price

In South Africa the purchase price is typically secured by means of a banker's guarantee payable to the seller's conveyancer or any third party that has been nominated by the seller or his conveyancer. Guarantees that are issued from a foreign bank are usually not accepted by a conveyancer, therefore, foreign purchasers should obtain a guarantee from a South African bank. Alternatively, the foreign purchaser can pay the full purchase price to the conveyancer, who would then invest the amount on their instruction, pending registration of the transfer.

Interest gained on invested funds

A conveyancer will place the purchase price received, into a separate interest-bearing trust account in the name of the purchaser. If the purchaser wishes to benefit from the investment, they must ensure that provision is made for this in the sale agreement or instruct the conveyancer accordingly.

Exchange control

The South African Reserve Bank has imposed regulations that govern the transfer of funds in and out of South Africa, referred to as exchange control. Any funds that a non-resident has introduced into South Africa in order to purchase a property must be disclosed to the relevant South African bank. This will allow a purchaser to convey the proceeds of a future resale of the property back to their overseas bank accounts. The banks act as an agent of the South African Reserve Bank and should a purchaser apply for, they will endorse the title deed with "Non-Resident" as a record that the funds were introduced from overseas.

When a purchaser acquires the shares in a South African juristic entity in order to facilitate the purchase of property, they will need to have in their possession a document from any South African bank that confirms that they are transferring funds from abroad. All such shares must also be endorsed by the relevant South African Bank within 30 days of acquisition.

Mortgage finance

A purchaser who is a non-resident may qualify to borrow funds via mortgage financing through a South African bank. This amount cannot exceed 50% of the purchase price for the property, unless it has been approved by the South African Reserve Bank. For every R1.00 deposited, you can apply for a loan of an equal amount.

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Voetstoots

This clause is introduced to protect the seller for latent or patent defects found in respect of the property. It aims to indemnify the seller from future damages claims if defects are discovered by the purchaser after registration. It is advisable for a purchaser to inspect the property sufficiently to detect any patent or latent defects and to ensure that a property condition report has been signed by all parties.

It is important to note that where an agent is mandated to sell a property, it is compulsory for the agent to provide a potential purchaser with a mandatory disclosure form that is signed by the seller. This form indicates all the defects that the seller is aware of within the property. The purpose of this document is to assist the potential purchaser to make an informed decision as to whether or not to make an offer to purchase the property.

Possession and Occupation

Possession of the property will typically coincide with occupation and is important because it usually entails the transfer of the benefits and risks of ownership. This is regulated by the sale agreement and prospective purchasers will need to ensure that they are informed whether the property is sold subject to existing tenancies or with vacant occupation. This means that risk can transfer to the purchaser before formal registration occurs in the Deeds Registry. We would therefore advise that a prospective purchaser should have the property insured from the date of possession.

Costs

Prospective purchasers should be aware that they are usually liable for the transfer costs, including but not limited to:

- Transfer fees - based on a recommended tariff that is issued by the Law Society of South Africa
- Value-added tax or transfer duty
- Deeds Office fees
- Pro-rata municipal rates and sectional title levies (applicable to sectional title properties only)
- The costs of obtaining the rates and levy clearance certificate/s

The sale agreement should make provision for the payment of the transfer costs so that the responsibility and liability of each party is clear.

For a more detailed discussion on costs, please see our “Who Pays for what on the Sale and Transfer of a Property” brochure.
Click here: https://bissets.com/wp-content/uploads/2021/02/Who-pays-for-what.pdf

TAX RELATED MATTERS

Income Tax

Foreign non-residents are only liable to pay income tax in South Africa on income accrued in South Africa, or from a South African source of income.

An example of this will be rental income.

Section 35A of Income Tax Act 58 of 1962 – Withholding Tax

There is an automatic withholding tax which is levied by the SARS when a non-resident sells a property for more than R2 million.

The following rates apply:

- Natural persons – 7.5%
- Companies – 10%
- Trusts – 15%

The withholding tax is payable to SARS within 14 days after transfer if the Purchaser in the transaction is a South African resident and 28 days after transfer if the Purchaser in the transaction is a foreign non-resident. The seller can apply to SARS for a tax directive which will state the exact amount of tax that is payable. When you liaise with your attorney or tax consultant, they will explain the relevant documents that are necessary and will be expected by SARS when applying for the tax directive.

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