



PURCHASING PROPERTY IN SOUTH AFRICA AS A NON-RESIDENT

There are various issues involved in purchasing property in a foreign country which should be learned before the signing of contracts, documents and paying of money.

To this end, I have put together the following questions and answers which I believe non South African residents should know about in order to be both an informed and intelligent investor. I trust that this information will assist in reassuring you that purchasing property in South Africa by non-residents is encouraged by the South African government and is a relatively easy to accomplish compared to the difficulties encountered by investing in property in many other countries.

Are there any restrictions on non-residents buying property in South Africa?

The answer is a resounding NO, save for a prohibition on illegal aliens owning immovable property in SA. Non-residents will of course be subject to the same laws and regulations as South Africans and it is compliance with these that ensure the efficiency of our land registration system and security of tenure. Should the non-resident not wish to purchase the property in his or her individual name and rather purchase in the name of an entity, this entity must be locally registered and meet the requirements inherent in registration of the chosen entity, such as those contained in the Companies Act. For example, the non-resident may decide to own the property through share ownership in a company, membership in a close corporation (unique to South Africa) or as a beneficiary in a Trust.

For the most part however, property is registered in the name of the purchaser as an individual. There may be specific reasons for registering it in the name of a different entity and for an overview of these, kindly do not hesitate to contact me with any questions you may have.

Please note that as a purchaser, you need to have finalized your intentions with regards to the entity selected for purchasing the property prior to signing any Offer to Purchase or Agreement of Sale as this cannot be changed at a later date without the possibility of incurring serious penalties and resulting in delays in the transaction. Finally, a non-resident can even purchase South African property over the internet without entering the country; and I have sold many properties to buyers from the internet and should you wish, I will provide you with referrals of clients who have done so. It is not a difficult process.

Many foreigners ask about whether owning property helps with obtaining permanent residency, work permits or extended vacation permits. Of course, owning property here does help in obtaining such permission. Should you wish to know a specialist immigration attorney who can assist you with obtaining a work permit or permanent residency, please do contact me.

How do I bring foreign funds into SA for a property acquisition?

Foreign funds can be paid into any nominated bank account in South Africa. Usually this account will be the estate agent's trust account or transferring attorney's trust account into which the deposit for the property and the balance of the purchase price is paid. This money will be invested for the non-resident's benefit and the non-resident can rest assured that such a transfer is secure and guaranteed, as the operation of those trust accounts is regulated by the professional boards overseeing both the attorneys' and estate agents' professions. When the non-resident transfers funds into a South African bank account from a foreign source, a record of the foreign funds entering the South African bank is kept and is known as a "deal receipt".

This is an important document that must be kept for purposes of repatriation of the funds. It is easier to open your own bank account in South Africa, when you are personally in the country and I will be pleased to introduce you to the right bank and bankers for you who have knowledge in this area.



Can I borrow money in SA to purchase property?

South African Regulations consider all foreigners not having their domicile in South Africa to be non-residents, except for foreigners with South African work permits who will be considered residents for the duration of their work permit. What this means is that non-residents are restricted in their borrowing ratio to 50% of the purchase price while the remaining 50% must be brought into the country in cash from a foreign bank. I am able to assist you in finding a selection of South African Banks and the right contacts within those banks, who have vast experience in providing mortgage bonds to non-residents.

Can a non-resident open up a bank account at a South African banking institution? In order for a non-resident to service repayments on a mortgage bond, he or she will need to open a non-resident account which can be done from abroad or from within the country or an attorney or estate agent will assist you with these payments. You may also be able to pay the back directly from overseas.

Who chooses which attorneys will attend to the transfer and whose interests are the attorneys protecting?

It is customary in South Africa for the Seller of immovable property to nominate the attorneys who will attend to the transfer. Those attorneys then act for the seller and on his or her instructions. Consequently, in the event of a dispute between the seller and purchaser, the purchaser would need to seek independent legal advice from other attorneys. Whilst the seller selects the attorneys, the purchaser pays the costs of the seller's attorney. Should you wish to have your own attorneys, I would be most pleased to recommend them. Although it is customary in South Africa, just to use the sellers' attorneys' to handle the transaction and to only use your own attorneys in the event of a problem arising.

Can transfer and bond documents be signed overseas and if so, what is the procedure?

Yes; however, there are certain formalities that need to be complied with. Documents can be signed either before a Notary Public or at the South African Embassy in that country. If the purchaser is in South Africa at the time of sale and will be flying back overseas, it is advisable for the purchaser to arrange a special or general power of attorney in favor of an attorney, friend or family member here in South Africa.

Other than the purchase price, am I liable for any other costs when purchasing property?

Yes. The purchaser is usually liable for the following costs: The Government tax of registering the property in your name is called "Transfer Duty". This "Transfer Duty" tax is not payable if the seller is VAT registered, which is generally the case in the purchase of brand new property and thus the VAT is included in the purchase price and no Transfer Duty need be paid. Other costs of the Transfer include the fees of Attorneys, deeds office levies, pro-rata rates and taxes/ sectional title levies, as well as the costs of obtaining a rates/levy clearance certificate. These are additional costs of the purchase. You should allow for the costs of these items, other than the transfer duty, and will be about 1½ % of the purchase price below R1,500,000 and about 1% above that amount.

Most of these costs are determined according to the purchase price of the property. For example, the Transfer Duty paid on a purchase of a property in your own name under R500,000 is zero, from R500,000 to R1,000,000 it is 5% of the purchase price, (for example on a purchase of a property at R800,000 the transfer duty would be R15,000 (R800,000 – the R500,000 exemption which equals R300,000 times 5% rate which means the transfer duty will be R15,000). Above R1,000,000 the cost is 8% above R1,000, 000 + R25,000, so for example the transfer duty on a purchase of R2,000,000 would be R105,000 (R25,000 plus the 8% of the difference between R2,000,000 and the R1,000,00 base or R80,000)

The purchaser will incur further costs if he or she registers a mortgage bond, including the attorney's fees and bank charges such as the initiation and valuation fee Once the purchaser takes transfer of the property or assumes the



risk therein, he or she will be liable for all costs and risks associated therewith. If the property is not bonded, it will be in the purchaser's best interests to obtain insurance. This is compulsory if the property is bonded and normally arranged by that bank.

If I decide to sell the property, will I be able to take my money out of the country?

Understandably, this is no doubt the number one question non-residents need answered before investing in South Africa. The answer is simply, yes. Money from a foreign source may be repatriated in due course according to our Exchange Control Regulations, together with any profit, proportionate to that non-residents share-holding in the property. (Consider a non-resident who has purchased a property 50/50 with his girlfriend who is a South African resident but funded the full purchase price with funds from off-shore.) On transfer to the non-resident purchaser of the property, the title deed will be endorsed 'non-resident' and /or a deal receipt retained by the banking institution when the foreign funds were originally introduced into the country.

This then facilitates the repatriation of the funds and profit on sale of the property, as long as they are able to satisfy the bankers that such profit is reasonable and market related. Obviously if the purchase was financed with funds borrowed in South Africa, that portion of the purchase price cannot be repatriated out of the country unless the bond has been settled in full. Furthermore, if a foreigner takes up permanent residency in South Africa and signs a Declaration and Undertaking at a South African bank (namely to declare whether they are in possession of foreign funds and to undertake not to place these at the disposal of anyone resident in the Republic) they will be considered a resident for exchange control purposes and only able to repatriate funds within five years of their immigration, following which they will be considered akin to a South African and subject to the same regulations and limitations. Finally, the repatriation of funds will be subject to capital gains tax, which simply put will be no greater than 10% of the profit.

As a non-resident, am I liable for payment of any South African income tax?

While South Africans are taxed on their worldwide income, non-residents are liable for income tax only on that income accruing from a South African source. So, if the property is rented out, for example, that rental income will be subject to South African income tax and appropriate tax expenses (deductions) are permitted thereby lowering the amount of tax to be paid. On the sale of the property, the non-resident will be liable for payment of The Capital Gains tax. For property registered in the individual's name, 25% of the profit will be taxed at the individual's marginal income tax rate. The maximum marginal rate is currently 40%, and this therefore translates to a maximum flat rate payable of 10% of the capital gain.

An obligation exists for non-resident sellers to register as income tax payers in the year of disposal of their immovable property in SA. However, this was not being done and The South African Receiver of Revenue was losing out on income tax that was payable. Accordingly, measures were introduced which tightened their tax collection net considerably. So, as of 1 September 2007, the regulations were changed so that an obligation is now imposed on any purchaser who purchases a property from a non-resident with a purchase price exceeding R2 million to retain a percentage of that purchase price and to pay it over to South African Revenue Service within 10 days from the date of transfer of the property. The amount that will be retained is 5%; if the seller is a non-resident individual, if the seller is a non-resident company or close corporation to withhold 7.5%; or 10% if the seller is a non-resident trust.

This amount will then operate as an advance collection against the non-resident's income tax liability for the year of assessment in which the property is sold. In practical terms the seller's attorneys remit this amount and it will be credited with the filing of a tax return and a refund may result. But please keep in mind, that for most taxpayers, they will receive a credit on their home country's tax return for any income taxes paid in South Africa.

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