



Africa Estate

Foreign buyers

SOUTH AFRICA WELLCOMES YOU!!

South Africa is often referred to as a world within one country. Investment property in South Africa offers excellent promise for property investors.

Feel free to make use of Africa Estate's website for more information.

INFO FOR FOREIGN BUYERS

Aliens (non- residents)

There are very few restrictions on property ownership by non-residents but there are procedures and requirements which must be complied with in certain circumstances. In terms of the Aliens Control Act 96 of 1991 a non South African citizen who is in the Republic of South Africa may buy or rent immovable property only if he is in possession of a permanent or temporary residence permit. If a temporary residence permit has been issued to an alien, allowing him to stay for a short while, in a particular area of the RSA, property may be sold or let to him only in that area. A contravention of the Act is an offence.

Foreign investors

One does not need a permanent or temporary residence permit to purchase property in the Republic of South Africa if one does not intend on living in the property

Purchasing Property in South Africa as a Foreigner

South Africa has one of the best Deeds Registries Systems in the world, which makes it very safe to purchase and sell property in this country.

Property can be owned individually, jointly in undivided shares or by an entity such as a company, close corporation or trust or a similar entity registered outside South Africa.

Property of any kind in South Africa is normally purchased through a broker or real estate agent

Real Estate Agents Commission

The recommended tariff by the Estate Agent Affairs Board is 7.5% plus VAT (currently 14%).

Offer to purchase

Once you find a suitable property, the Agent will prepare an Offer to Purchase, which is open for acceptance by the Seller for a certain period of time. The Purchaser is not allowed to withdraw the offer in the stipulated period. Contracts with respect to purchase of property must be in writing, contain certain prescribed information and be signed by both buyer and seller to be valid and legally binding.

Documentation and prescribed information

PURCHASE PRICE

A deposit is a gesture of good faith on the part of the purchaser and an indication of financial ability, but is not mandatory. This amount will be invested by the estate agent/conveyancer in an interest-bearing trust account for the benefit of the purchaser.

The balance of the purchase price will be called upon in the form of a bank guarantee from a local financial institution. Alternatively, arrangements must be made between a foreign and local bank for a back to back guarantee to be issued.

OCCUPATION, POSSESSION, TRANSFER AND OCCUPATIONAL RENTAL

Occupation is the physical occupation of the property whereas possession is generally deemed to be the date upon which the purchaser assumes responsibility for the property and it is customary for the risk of ownership to pass on the date of possession. Transfer refers to the actual date of registration of ownership in the Deeds Registry in favor of the purchaser. Occupational consideration is the rental payable by the party occupying the property belonging to another where the date of occupation and date of transfer differs, which is better expressed in Rand terms or as a percentage of the outstanding balance of the purchase price.

VOETSTOETS

This is a standard clause in all offers to purchase/deeds of sale and means that the property is bought in the exact condition in which the property is found. However, all patent and latent defects present in the property within the sellers' knowledge must be brought to the attention of the purchaser.

ELECTRICAL AND BEETLE-FREE CERTIFICATE

The property owner is required by law to be in possession of a valid 'electrical compliance certificate' certifying that the electrical installation at the property meets certain statutory safety requirements. The beetle-free certificate certifies that all accessible parts of the property are free of infestation by certain defined beetle and this certificate, whilst a standard inclusion in the Agreement of Sale, is neither a legal requirement nor included in sales of sectional title units. The cost of attending to the necessary repairs in order for the aforesaid certificates to be provided, is generally accepted as being for the account of the seller, although, the parties can contractually agree otherwise.

FIXTURES AND FITTINGS

A property is sold together with all fixtures and fittings of a permanent nature. This will generally include anything attached to the property. In the event of any uncertainty, the purchaser is cautioned to ensure that all items intended to be included in the purchase price are specified in writing in the Agreement of Sale.

FICA

As part of its international observance of “money laundering” laws, South Africa has enacted the Financial Intelligence Centre Act (known as FICA). One of the requirements of FICA is for the conveyancer to obtain “know your client” information and as such will request the buyer and seller to provide certified copies of certain documents, such as their passport and proof of residential address.

Once an Agreement of Sale has been signed by both parties, it represents a valid and binding document from which neither party can withdraw without legal consequences unless the agreement is subject to certain conditions which are not fulfilled

Mortgages

A non-resident must open a 'non-resident' account at a South African commercial bank, to facilitate loan repayments.

The purchase of the property can be financed by obtaining a loan from a Financial Institution in South Africa, which loan will be secured by a First Mortgage Bond to be registered over the property when the property is transferred.

If you require such a loan to be able to finance the property, a suspensive condition will be inserted in the contract making the sale of the property subject to the loan being granted. In the event that the application for the loan is unsuccessful, the contract shall expire and become null and void.

These are the minimum requirements for the abovementioned to apply for a home loan with a South African financial institution:

- Proof of income
- Signed offer to purchase
- Copy of Identity document/ Passport / permanent residency document (Non South African residing in South Africa)
- Breakdown of Assets and Liabilities
- Clear credit record
- 3 months bank statements

Non-residents purchasing a property in South Africa may borrow up to a maximum of 50% of the purchase price in South Africa and not 100% like a South African citizen; the other 50% of the funds must be brought into the country by the purchaser and transferred from a recognized

foreign bank to a bank in South Africa. The total amount that may be borrowed is at the discretion of the commercial bank offering the loan.

Security of Investment

The banking system in South Africa is dependable, established and highly advanced. Transfer of funds through any registered South African Bank is secure and guaranteed. Once the money transfer has taken place, it is usually held in trust by an attorney or real estate company, either on behalf of the purchaser or the seller until registration of transfer. The holding of the funds in trust by an attorney is a cornerstone of the attorneys' practice and is regulated by the relevant Law Societies and secured by the Attorney's Fidelity Insurance.

Repatriation of Funds

The Exchange Control Rulings stipulates that funds brought into the country by a non-resident may be repatriated at any time, as well as any capital gain thereon after deduction of any Capital Gains Tax payable.

A new immigrant may only repatriate funds introduced from abroad, and capital gains accruing thereon, within the first five years of the date of signature of the Immigrant's Declaration. Thereafter, such person will be bound by Exchange Control restrictions imposed on residents with respect to the repatriation of funds.

South Africa has exchange control regulations which restrict the inflow and outflow of capital in South Africa. Investments into South Africa must be reported to the South African Reserve Bank, which administers exchange control. Some of these powers are delegated to certain banks which are authorized dealers.

It is of fundamental importance to most non-residents that investment funds and funds generated by the investments can be repatriated. Funds introduced into South Africa to acquire property may, together with the profits on resale of the property, be repatriated if the title deed of the property was previously endorsed "non-resident" by an authorized dealer. This practice has been terminated by most of the local banks, which are only prepared to endorse the share certificates of foreign shareholders as "non-resident". Good record keeping is accordingly of utmost importance to any foreigner who purchases property in South Africa. Non-residents have to apply to take money out of South Africa. The application is usually handled by an authorized dealer who requires the following documents:

1. a certified copy of the seller's passport.
2. A certified copy of the purchase and sale agreement concluded when the seller purchased the property.
3. The seller's bank statements confirming the transfer of the funds to South Africa when the property was purchased.
4. A letter from the attorney who attended to the transfer of the property confirming receipt of the funds.
5. A copy of the sale agreement to prove that the seller sold the property at fair market value

Conveyancing Attorney

Once the contract is finalized, the Seller appoints a Conveyance Attorney that will attend to the registration of the transfer of the property and the Mortgage Bond. The costs attendant on same are for the account of the purchaser, unless contractually agreed to otherwise.

The transfer process

- 1. Once the suspensive condition is fulfilled and the bond registration instruction is received, the transfer documents and the Bond Documents are drawn for signature by the Seller and the Purchaser. Should you wish to leave the country during this time, it is a good idea to appoint an attorney by means of a *Special Power of Attorney* to sign the documents on your behalf in order to avoid the strict signature requirements in the event of the documents having to be signed outside of the country.
- 2. The Bond Cancellation instruction, for the cancellation of the Seller's Mortgage Bond registered over the property is also applied for at this stage. This instruction will contain the Title Deed of the property, which was held as security by the Financial Institution for the loan that was granted.
- 3. Once the documents are signed and the transfer costs paid, the Conveyance Attorney will pay the transfer duty and the property rates and taxes required in advance, in order to obtain the transfer duty receipt and the rates clearance;
- 4. Once the transfer duty receipt, rates clearance, and Bond Cancellation Instruction are received, the Conveyancer can draft the new Title Deed in the Purchaser's name, and the transfer, bond registration and bond cancellation can be lodged in the Deeds Office.
- 5. The Deeds Office process takes 8 to 10 working days, where after the property is registered in the Purchaser's name.

Steps 1 to 5 take approximately 2 months, but delays can be expected should documents need signature over seas.

As a South African citizen is only allowed to take R2, 000,000.00 out of the country in a life time, the Conveyancer attends to the endorsement of the Title Deed as "Non Resident" in the event of a cash transaction before it is delivered to the new Purchaser. This step is taken to expedite the transfer of the proceeds of the sale of the property off shore once the new Purchaser decides to sell the property.

Property Purchase Costs

There are a number of variable costs that should be considered when determining the total amount involved in all property transactions.

- Transfer costs and transfer duty on the Purchase Price
- Bond costs based on the loan amount
- Other costs (if applicable) are:
 - Conveyancers Sundry Expenses
 - Rates Clearance Certificate
 - Issue of Guarantees
 - Property Inspection/Valuation Fees
 - Insurance Premiums
 - Building Loans, - Interim interest
 - Pro rata share of rates and taxes
 - Estate Agents Commission

The following are costs borne by the purchaser:

- Transfer Duty -a tax levied by the government on transfer of ownership of fixed property. Where the purchaser is a natural person, the duty is calculated on the following scale:
 - Up to R150 000 - Nil
 - R150 001 - R320 000 - 5%
 - R320 001 and above - R8 500, plus 8% on the value above R320 000.
 - Where the purchaser is a legal entity, transfer duty is levied at 10% of the purchase price.
- Transfer Costs - Attorney's Fees for conveyancing. These costs are calculated on a sliding scale, which is regulated by a tariff between 1-2% of the purchase price.
- Mortgage/Bond Costs are costs incurred for raising mortgage finance. These fees include inspection fees of 0.2% of the bank valuation. Mortgage registration fees according to a prescribed tariff are payable to the registering attorneys.
- Estate Agents Commission - normally paid by the seller is 7.5% plus VAT (VAT is currently 14%).

Tax implications

One of the most important issues for the foreign buyer is the tax implications of purchasing a property in South Africa.

INCOME TAX

South African taxation is based on a revenue income tax system meaning that income earned from a South African source will be subject to ordinary income tax. Accordingly, any rental earned by non-residents in respect of South African properties will be subject to income tax and it is the responsibility of the non-resident to register as a South African taxpayer.

Income earned by natural persons below R 32 222.00 per annum (for persons under the age of 65) and R50 000.00 (for persons above the age of 65) is exempt from income tax, whilst all income earned over and above the aforesaid amounts, will be taxed at a marginal rate applicable to that non-resident in accordance with published tax tables. The marginal tax rate is calculated on a sliding scale with a maximum rate of 40%.

Corporate entities are subject to a tax rate of 30% of each Rand of taxable income whilst the equivalent rate for trusts is 40%. Non-resident companies are taxed at a rate of 35% but are exempt from secondary tax on companies ("STC") in respect of dividends paid.

The following will be payable on the purchase and sale of the property:

- 1. Transfer duty payable prior to registration, which amount is calculated on the purchase price of the property;
- 2. Property rates and taxes, payable monthly or yearly, and a portion of which needs to be paid in advance before registration to obtain a rates clearance;
- 3. Capital Gains Tax, calculated on the capital gain or profit once the property is sold. As from 1 September 2007, the Purchaser is liable to pay withholding tax to the Receiver of Revenue on a percentage of the proceeds under certain circumstances

CAPITAL GAINS TAX

South African residents are liable for the payment of Capital Gains Tax (CGT) on the disposal of any asset, subject to certain limited exceptions.

Non-residents, however, are only liable to pay CGT on the disposal of the following:

- Immovable property situated in South Africa, including any right or interest in immovable property (this also includes an interest of at least 20% in a company where 80% or more of the value of the net assets of the company is attributable, directly or indirectly, to immovable property in South Africa);
- Assets of a permanent establishment of a non-resident through which trade is carried on in South Africa.

CGT is payable in the year in which the asset is disposed of and is calculated by adding 25% of the capital gain, or profit, to the individual's income for that year and taxing that income at the

individual's marginal rate of income tax. The maximum marginal income tax rate for individuals in South Africa is presently 40% (reached at taxable income levels above R270 000). The capital gain is calculated and disclosed in the individual's income tax return for the year in which it is sold.

If a non-resident disposes of an immovable property in any year of assessment and is not already registered as a South African taxpayer, he or she will have to register as such and submit an income tax return reflecting the calculation of the capital gain, and will be liable for the payment of CGT on that gain.

CGT became effective on 1 October 2001 and is thus payable only from that date.

The amount of a capital gain is calculated either by deducting the value of the property as at 1 October 2001 (together with the costs of acquiring and improving the property) from the proceeds on disposal of the property or by apportioning the amount of time the property was owned between the period before 1 October 2001 and the period after that date.

South African residents do not pay CGT on the first R1 million of profit made on the disposal of their primary residence. However, non-residents will not qualify for this exemption if their primary residence is not in South Africa.