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ATTORNEYS PROKUREURS

ACQUISITION OF IMMOVABLE PROPERTY AS A NON-RESIDENT IN SOUTH AFRICA

Introduction

1.1 Purchasing and taking transfer of ownership of immovable property (land) in South Africa is a fairly easy and uncomplicated process.

1.2 South Africa's system of land registration is considered one of the best in the world. Precise records of ownership, bonds, servitudes, etc. are kept in the Deeds Registries.

1.3 Transfer of ownership of land passes upon execution by the Registrar of Deeds of a formal transfer deed prepared by a Conveyancing attorney (solicitor).

Restrictions

2.1 There are no restrictions upon a non-resident who is legally in the country or outside to acquire immovable property in South Africa. One does not have to be in the country to acquire ownership of immovable property.

Owner

3.1 Ownership can be personal, or through a company, close corporation or a trust.

3.2 Which ownership vehicle to use will depend on the particular circumstances and an attorney specialising in this field should be consulted.

3.3 In general, however, personal ownership would be the better option for non-business purposes (i.e. residential). Companies are subject to higher tax rates, set up and annual administration cost.

Sale agreement

4.1 Once a property has been found, a written Agreement of Sale must be entered into and signed by both the seller and the buyer or their written authorised representatives. An oral agreement in respect of land is void.

4.2 Should the services of an estate agent be used, the agent will normally draft the sale agreement. It is, however, advisable to have the same checked by an attorney. As the Sale Agreement is the most important document creating the rights and obligations between the parties, the parties may prefer to be represented by their own attorneys in the matter, especially in commercial matters.

4.3 If it is a private sale, i.e. over the internet or otherwise without the intervention of an estate agent, the sale agreement would normally be drafted by an attorney. For residential property the fee would be approximately between R1 500 to R5 000. For farms and commercial properties, it may be more.

4.4 The purchaser will, normally, be requested to deposit up to 10% of the purchase price with the agent or attorney. This is not a requirement of law but serves as security to the seller should the purchaser repudiate the agreement. In such event, the deposit would normally be forfeited to the seller.

4.5 The deposit is normally invested in Trust by the Conveyancer, the interest to be for the benefit of the purchaser. The investment is protected by an Indemnity fund.

Transfer

5.1 Once the written Agreement of Sale has been concluded, either by an Estate Agent or Attorney, the same will be handed to a Conveyancing Attorney, who will draft the transfer documents and then forward these to the seller and buyer for signature. Only one attorney is used for this purpose, usually the Seller's attorney.

5.2 The Conveyancing Attorney will request the buyer to pay the costs of transfer as set out below, as well as to furnish a bank guarantee for the balance purchase price, (if a deposit was paid), alternatively to deposit the balance purchase price to the attorney's trust account.

5.3 The sale is then cleared with the Local Municipality (all outstanding rates have to be paid) and with the South African Revenue Services ("SARS") for payment of the prescribed Transfer Duty, or exemption if VAT is involved. The documents are subsequently lodged in the Deeds Office for examination and transfer of ownership, thus concluding the process.

5.4 The Deeds office will examine the documents carefully, ensuring that the same are correct. Hence the accuracy of the system.

5.5 The whole process should take between 6 to 8 weeks.

Finance

6. Depending upon the buyer's cash flow, South African banks will lend up to 50% of the purchase price to non-residents who qualify upon a mortgage of the property.

Costs

7.1 If an estate agent is the effective cause of the sale, the estate agent's commission equals approximately 6% plus Value Added Tax ("VAT"), of the total purchase consideration.

7.2 If the transaction is subject to VAT, no transfer duty is payable. Residential property purchased from a developer will be subject to VAT.

7.3 If the transaction is not subject to VAT (as is the case with all residential property purchased from non-developers), Transfer Duty on the purchase price is payable to SARS, calculated on the following scale:

• R0 – R1 100,000.00 of purchase price:	NIL
• R 1 100,001.00 – R1 512 500.00:	3% of the purchase price above R 1 1 001.00
• R 1 512 501.00 – R2 117 501.00:	R 12 375.00 + 6% of the purchase price above R 1 512 500.00
• R 2 117 501.00 – R 2 722 500.00:	R 48 675.00 + 8% of the purchase price above R 2 117 501.00
• R2 722 501.00 – R 12 100 000.00:	R 97 075.00 + 11% of the purchase price above R 2 722 501.00
• R 12 100 000.00 and above:	R 1 128 600.00 + 13% of the purchase price above R 1 210 000.00

7.4 In addition, the attorneys' transfer fee for the transfer will amount to approximately 1% of the purchase price plus VAT. (LAWSA Guideline Fee)

7.5 Where a mortgage loan is taken, the bank will charge a raising fee of approximately R5 700.00 on the loan amount and the attorneys who register the mortgage bond will charge approximately 1% of the capital amount towards registering the mortgage. (LAWSA Guideline Fee)

7.6 A pro rata share of the Municipal rates and taxes (calculated from date of transfer) and HOA levies if the property is situated in an Estate will be due by the buyer to the Local Authority and HOA concerned and will be collected by the Transferring attorney.

7.7 There are no other costs of acquisition.

Taxation:

Income Tax

8.1 Residents (as defined in the Income Tax Act) are subject to Income Tax in South Africa on their worldwide income. Non-residents are liable for Income Tax in respect of income which accrue from a source in South Africa.

8.2 Thus, income (such as rent) from an asset situate in South Africa will be subject to South African income tax.

8.3 There is presently no withholding tax on rent.

Capital Gains Tax ("CGT")

8.4 The property acquired will also, upon its subsequent alienation or death be subject to Capital Gains Tax ("CGT") in South Africa, provided it was acquired as a capital asset.

8.5 CGT is calculated at a sliding scale with a maximum of 18% of the capital gain for natural persons. For companies it is 22.4% of the gain and for trusts 36%.

8.6 For proceeds of R2 million and more, there is, however, a withholding tax on Capital Gains, which must be deducted from the purchase price and payed to SARS, pending the assessment. For individuals: 7,5 % of the sale price, for companies: 10 %, for the Trusts: 15%. We can, however, apply for an upfront determination, which is normally substantially less.

8.7 Residents are entitled to R2 million exemption on a primary residence.

8.8 Accurate records must be kept of all capital improvements to the property.

8.9 The buyer will be required to register as a taxpayer in South Africa. The registration as taxpayer is a simple process and can be done by an accountant or the attorney attending to the transfer.

8.10 Upon the death of the owner the property, it will also be subject to CGT and Estate Duty ("ED").

8.11 If, upon death the property is transferred to a resident spouse, a rollover of CGT is applicable, and also no Estate Duty payable.

Estate Duty ("ED")

9.1 R3.5 million of a person's nett estate is exempt from ED, which is charged at 20% upon the nett estate situate in South Africa, below R30 million and 25% above R30 million. If the property is transferred to a spouse, no ED will be payable upon the demise of the first dying of 2 spouses. The survivor will then have R7 million exemption.

9.2 By example, if the property is less than R7 million no ED.

Exchange Control

10.1 Although very much relaxed lately and expected to be done away with entirely sometime in future, Exchange Control continue to apply in South Africa.

10.2 Thus, Reserve Bank consent will be required to repatriate income earned in South Africa and to repatriate the capital and gain on sale of a property.

10.3 Any amount of money may be transferred into the country to account for the purchase price and costs on a property acquired. A buyer should instruct the receiving commercial bank in South Africa to report the transfer of such monies to the South African Reserve Bank. That will ensure trouble-free repatriation of the amount brought into South Africa as well as any gain made on the property (excluding CGT referred to above) upon resale. The buyer must keep record of the inward transfer, which will be required to repatriate the money on sale.

Permanent Residence

11. Property ownership in South Africa on the one side, and permanent residence on the other, are two completely separate issues, dealt with in terms of distinctly different criteria and legislation. However, the value of a property purchased in the country will be relevant as part of the requisite amount to be brought into the country before an application for permanent residence in the applicable category may be made. One should seek the advice of a specialist (attorney or immigration agent) for the necessary guidance and assistance.

Security

12.1 South Africa has a sophisticated banking system and likewise, the larger firms of estate agents and attorneys are efficient and well-positioned to assist with property related enquiries.

12.2 Presently approximately 7% of all property in South Africa is owned by non-residents.

12.3 Over the past 20 years, virtually all new upmarket residential developments have been in security estates with access control, which happen to be popular buys for non-residents, as it normally provides for a lockup-and-go situation.

Expropriation without Compensation

13.1 The above mantra was coined by the EFF, a radical minority party lead by Commander in Chief, Julius Malema.

13.2 What the Ruling party seems to have in mind is that unproductive land should be expropriated and given to the people. At this stage there is no fear that private property in the form of residential properties or productive land will be targeted.

13.3 Obviously, the legislation requires a 2/3 majority in Parliament, being an Amendment to the Constitution. The legislation in itself, will also have to get through a few constitutional challenges.

13.4 It is considered of such little importance, that no further discussion is required

Conclusion

14. For more information, please do not hesitate to contact us.

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