

What foreign owners should know

2008/02/01

Whilst the debate rages on about whether or not there should be government intervention to regulate foreign ownership of local immovable property, [Sifiso Msomi](#) the current position is that there is no law in South Africa which prohibits foreign nationals from owning immovable property.

What should foreign nationals look out for when they buy immovable property here?

1. They must enter into a written agreement of sale of immovable property. In terms of the Alienation Land Act of 1981, a verbal/oral agreement of sale of immovable property is null and void;

2. They must be prepared to be subjected to the requirements of the Financial Intelligence Centre Act 38 of 2001 (FICA) and the Prevention of Organised Crime Act 121 of 1988 (POCA) and regulations promulgated in terms thereof. In particular, they must prove who they are, where they live and declare their source of funds for the purchase of the property, otherwise the conveyancers will not invest and administer any deposits or any other monies paid by the foreign national in terms of the sale agreement;

3. Depending on whether or not the seller is a vat vendor, they must be prepared to pay either vat calculated at 14% of the purchase price or transfer duty when they acquire the immovable property;

4. They must be prepared to pay conveyancing attorneys fees for attending to the transfer of the property;

5. Once they acquire the property, they become responsible for the payment of rates and taxes in respect of the property - usually from the date the property is registered in their name.

What documents should they have when they want to take the proceeds of sale out of South Africa once they have sold the property?

1. The application to take the money out of South Africa is normally handled via our banks' International Trade Services Departments;

2. The attorney who holds the monies in trust on behalf of the foreign seller would normally complete the bank's application to transfer funds into an overseas account. Such an application must be accompanied by:

2.1. a certified copy of the seller's passport;

2.2. a certified copy of the purchase and sale agreement concluded when the seller bought the

A Property24 Article

property.

2.3. The seller's bank statements confirming that he/she transferred the funds to South Africa when he/she purchased the property;

2.4. Letter from the attorney who attended to the transfer of the property to the seller confirming receipt of funds;

2.5. Copy of purchase and sale agreement of the seller's property. A letter from either a property valuer or a reputable estate agency confirming that the foreign national sold the property at a fair market value.

In essence, what the above means is that when foreign nationals buy property, it is important for them to keep proper records of their transactions.

Tax payable when they dispose of the property in South Africa

Section 35A of the Income Tax Act 58 of 1962 which came into effect on 1 September 2007 provides that where a person buys South African immovable property from a non-resident, the purchaser must withhold tax from the proceeds of the sale. The amount of tax to be withheld which must be paid to SARS within 14 days if the purchaser is a South African resident or within 21 days if the purchaser is a non – resident, is determined as follows:

- 5% of the total amount where the seller is a natural person;
- 7,5% of the total amount where the seller is a company; and
- 10% of the total amount where the seller is a trust.

This tax legislation is not applicable where the purchase price of fixed property is less than R2m.

It is important to note that any estate agent and conveyancer who is entitled to a fee, that should have reasonably known that the seller is a non-resident, must notify the purchaser of this fact. If they fail to notify the purchaser of this fact, they are jointly and severally liable for the amount of taxes payable to SARS, up to their remuneration in respect of that transfer.