



Important Facts about Property

Buying houses, facts and figures, laws and by-laws, contract of sale, costs and immigration information.

General

The South African government system is generally seen as progressive and well organised. The ownership rights of a property according to South African law are granting a high degree of security also for foreign owners.

The real estate agent's role in purchasing/selling is more vital than in most parts of Europe. In South Africa it is common practice for estate agents to negotiate the sales and purchases on behalf of their client (seller or buyer). Usually the agent will be setting up the contract of sale with the parties and will be the witness for the parties' signatures.

He or she should be a member of the "Estate Agents Board of South Africa". This ensures for the foreign buyer that the trust account maintained with the agent is backed by a "trust certificate".

Law

Foreigners are described by the South African Reserve Bank as "non-residents". Non-residents may in South Africa acquire real estate without limitation. However, they are subject to certain regulations:

For the transfer of foreign currency as payment for a property, a "non-resident account" with one of the major South African banks will have to be opened. Funds arriving on this account are directed via the Reserve Bank and monitored. Any funds from this account, also profits from fixed deposits, lease earnings, etc., may be retransferred from this account out of the country at any time.

The rights on a property are secured through a title deed. The Ministry for Land Affairs is monitoring the registration of deeds, and the right of ownership also for non-residents is granted in the constitution.

Only attorneys that are registered as notaries may carry out the transfer or changes in the ownership of real estate.

Contract of Sale

Generally the contract of sale is prepared by an offer to purchase, which is a standard form on which the potential buyer is making his offer to the seller. Although this document is only called "offer to purchase", through the acceptance and signature of the seller it becomes a legally binding contract of sale. Therefore legal advice, if required, should be obtained before signing an offer to purchase. The contract of sale usually stipulates that within a certain period (approx. 2 weeks) 10% of the purchase price has to be paid into a trust account managed by the estate agent. Both estate agents as well as conveyancers are bound by strict government regulations regarding their trust accounts, therefore there is no risk of embezzlement.

The remainder of the purchase price will be payable upon registration of the title to the conveyancer. The initial down payment, of which the estate agent usually keeps his or her commission of 7.5% (by now the general rate in SA), will be paid to the conveyancer after the successful title registration. The commission is usually carried by the seller, but in exceptional cases can be negotiated otherwise.

When financing through a bond, a confirmation of the bank has to be produced. Unless unforeseen problems arise, the title registration is done within 4-6 weeks. Foreigners may finance their acquisition through one of the major SA banks to up to 50% of the value of the property. But for this it is required that interest and instalments are backed by local lease income or through a standing or stop order from overseas. The occupation of a property is usually done after the registration of the title is completed, but upon payment of a usage fee can be negotiated to an earlier stage.

The documents prepared by the conveyancer for the registration of the transfer of ownership have to be signed in black ink and certified (e.g. authentication of your signature through a notary in your home country), should the signature take place outside SA. This might be a hassle sometimes, therefore it's advisable to give power of attorney to a trusted person inside SA. If the buyer is married and the marriage is governed by foreign law, the signature of the buyer's spouse is also required.

Costs

The estate agent's commission currently is 7.5 % + 14 % VAT (usually paid by the seller).

The transfer costs for the conveyancer are calculated according to a fixed fee table and are around 1.5 and 2 % of the purchase price. Those costs are carried by the buyer.

The transfer duty is also paid by the buyer. For private persons the following rates apply:

Purchase price	Transfer duty
R 0 - R 150,000	no duty
R 150,001 - R 320,000	5 % on the value above R 150,000
R 320,001 and above	8 % on the value above 320,000 + R 8500

For legal persons (partnerships) the transfer duty is generally 10 % of the purchase price.

Immigration

The South African Reserve Bank describes foreigners - regardless if private or legal persons, whose usual place of residence is outside the common South African currency zone, as "non-residents".

Non-residents may acquire real estate without limitation but are subject to certain regulations:

For the transfer of foreign currency (Euro, Dollar) as payment of a property, first a so called "non-resident account" must be opened with one of the major South African banks (ABSA, First National, Standard Bank, Nedbank). For this you don't need more than your passport and a small deposit amount. All funds arriving on this non-resident account will automatically be directed via the Reserve Bank and monitored. Any funds (also profits from fixed deposits, lease income etc.) may then later be retransferred from this account back overseas at any time.

A non-resident in South Africa may finance only 50 % of the value of a property through

a bank. The other part has to be transferred in from overseas. The repayment of a bond must be ensured either by lease income from the property or through regular money transfers from overseas (through the non-resident account). However, due to the very high bond interest rates in South Africa, it is advisable - wherever possible - to have the financing arranged outside South Africa. Lease earnings will have to be declared by the non-resident and taxed in South Africa.

Taxes

South Africa has a double taxation treaty with the UK and most European countries. Interest earnings and lease income are subject to taxation in South Africa (at source).

Below are some tax brackets (not applicable for legal persons/partnerships):

Income in SA:	Income Tax Rate:
0 - 70,000 Rand	18 % from 1 Rand upwards
70,001 - 110,000 Rand	12,600 Rand + 25 % from the part above 70,000 Rand
110,001 - 140,000 Rand	22,600 Rand + 30 % from the part above 110,000 Rand
140,001 - 180,000 Rand	31,600 Rand + 35 % from the part above 140,000 Rand
180,000 - 255,000 Rand	45,600 Rand + 38 % from the part above 180,000 Rand
over 255,001	74,100 Rand + 40 % from the part above 255,000 Rand

The highest tax bracket at the moment is 40 %.

Tax-free income:
Under 65 years 30,000 Rand
Over 65 years 47,222 Rand

Partnerships are subject to a taxation of 30 % of their taxable earnings. Exception: trusts = tax bracket of 40 %. Partnerships and companies with domicile outside South Africa are taxed with 35 %.

You should in any case contact a tax consultant as the tax laws are complex and changing every year.

Inheritance/Estate Tax:

The inheritance/estate tax - as well as the gift tax - is 25 % with a tax-free allowance of 1.0 million Rand.

Capital Gains Tax:

As from 01 October 2001 a capital gains tax (CGT) has been introduced. Decisive for a possible later taxation is the value of a property (as by 01/10/2001) or - if purchased later - the new value.

The CGT is only payable in the event of sale with profit. CGT is payable in the year, in which the asset is sold. The tax is calculated by adding 25 % of the profit to the personal income, which is subject to the individual income tax. Persons with residence in SA don't pay CGT on the first million of profit they earned from the sale of their first residence. This tax exemption is not applicable for foreigners as their first residence is not in SA. Tax-free allowances and tax brackets are depending on various factors (e.g. legal form of owner, property as main or second residence, etc.). On all these things you should seek expert advice.