

BUYING PROPERTY IN SOUTH AFRICA

Protect Yourself

Price bubble or not, you need to exercise caution when buying property. Consider these tips:

Buy at a reasonable price

The adage buy low, sell high applies to property as to any other asset class. The more you “overpay” for a property, the lower your profit is likely to be, if indeed you make any profit at all, and the longer you will have to hold onto the property before you break even.

Opportunities to acquire property at a reasonable price will always crop up because of the changing circumstances of individuals. There will always be somebody who is forced to sell a property quickly and hence at a reasonable price compared to similar properties on the market.

Don't over-borrow

The bigger the deposit you are able to put down on an investment property, the smaller your monthly home loan repayment. If you can afford the monthly repayment on the property without having to rely on the rental from a tenant, you will not be under financial pressure if you cannot find a tenant for a few months.

Factor in interest rate increases

While lower interest rates are good news for potential buyers, “stress test” your budget before taking the plunge. You should ensure you are not over-committing yourself financially while rates are low and that you will be able to take the heat when interest rates bounce back up as they are expected to do.

FINANCIAL ASSISTANCE

There are restrictions on loans to non-resident purchasers of property. In brief, the non-resident may only borrow up to a maximum of the amount invested by the non-resident into the purchase of the property, which translates into a 50% to value borrowing ratio.

Such loans are, however, subject to foreign exchange approval by the SA Reserve Bank which approvals are efficiently handled by all South African Commercial Banks offering financial assistance. Financial assistance is granted in the form of a loan secured by a Mortgage Bond to be registered in favour of the Bank granting the loan.

The obtaining of financial assistance should be included in the Agreement of Sale/Offer to Purchase as a condition where the sale is subject to the receiving of financial assistance. There are stringent restrictions and prohibitions imposed where the property is owned by a company and financial assistance is sought to finance the acquisition of shares and loan accounts in the property-owning company.

BUYING A PROPERTY

All contracts to acquire land must be in writing, contain certain prescribed information and be signed by both buyer and seller to be valid and legally binding. Contracts most commonly take the form of an Agreement of Sale or Offer to Purchase which once accepted constitutes an Agreement of Sale. 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 incurring legal consequences, save for certain instances where:

The agreement is subject to certain conditions which are either fulfilled/not fulfilled;

- The purchase price is less than R250 000.00 and certain additional criteria in terms of the Alienation of Land Amendment Act are present entitling the Purchaser to "cool off".
- The de facto ownership of property can also be obtained by means of acquiring the shares/members interest and loan claims in a company/close corporation respectively which company/close corporation is the registered owner of a property.

These contracts, strictly speaking, need not be in writing and can be concluded verbally which, although legally binding, is not advisable and it is recommended to record the agreement in writing to ensure that the material terms agreed to are accurately recorded.

It is important, furthermore, to note that only a natural person can acquire the members' interest in a close corporation. Accordingly, if it is intended for a non-resident company or Trust to be the ultimate purchaser, provision can be made for the close corporation to be converted to a private company at a nominal expense to facilitate same and this should be a condition of purchase.

Accordingly the decision to enter into and sign an Offer to Purchase/Agreement of Sale is not a decision to be taken lightly and it is recommended that an inexperienced purchaser obtain independent legal advice if uncertain in any respect.

NON-RESIDENTS

There are no restrictions on property ownership by non-residents, save for a prohibition on illegal aliens owning immovable property within South Africa.

There are, however, procedures and requirements which must be complied with in certain circumstances, such as, the local registration of entities registered outside of South Africa where it purchases property in South Africa and the appointment of a South African resident public officer for a local company whose shares are owned by a non-resident.

In the event of a non-resident purchasing property in the country with the intention of residing here for longer periods, permanent residency will have to be applied for in accordance with the given requirements and procedures of South African law.