

# BUYING & OWNING PROPERTY IN SOUTH AFRICA



**South Africa is proud to boast a sophisticated, world-class property registration system.**

Every piece of land in the country is reflected on a diagram, and ownership of that land is recorded in the particular Deeds Registry that services each province in South Africa.

This ensures that ownership of property in South Africa is both secure and guaranteed.

## OWNING A PROPERTY IN SOUTH AFRICA

**Any person or entity may buy and own property in South Africa, and there is no restriction on the ownership of property by non-residents or entities registered internationally.**

Non-Residents will also be pleased to know that they may sell their property at any time and will be freely entitled to repatriate their money (both the original purchase price together with any capital gain) provided that they can show that the money was brought into South Africa at the time of the purchase of the property.

Non-residents may also borrow funds in South Africa for purposes of the purchase of immovable property. Such a loan will typically be secured by the registration of a mortgage bond over the property purchased, but non-residents must bear in mind that the South African Reserve Bank will restrict their borrowing ratio to 50% of the purchase price of the property. This means that the other 50% must be brought into South Africa in cash from their foreign banking institution.

Non-residents are also entitled to open and operate bank accounts in South Africa, which are termed “non-resident” banking accounts. Foreign funds can be freely deposited to the non-resident account, and local currency (for example rental income or the proceeds of sale of property) can also be deposited into the non-resident account provided that the source of the funds is cleared with the non-resident department of the particular bank beforehand.

## THE FINANCIAL INTELLIGENCE CENTRE ACT (FICA)

**Simply put, FICA is South African legislation** implemented to curb money laundering, and requires that so-called “accountable institutions” (such as Estate Agencies, Law Firms and Banks) identify their clients and the source of their funds.

So for purposes of the sale, purchase or mortgaging of property or the operating of banking accounts, proof of both identification and residential address will need to be produced.

## THE CONTRACT FOR PURCHASE & SALE

**It is a requirement of South African law that all contracts to acquire land must be in writing and signed by the purchaser and seller.** It is customary for a purchaser to submit a written offer to purchase to the seller which, once accepted, becomes a legally binding agreement of sale (contract) between the seller and the purchaser.

It is therefore of critical importance that a purchaser research the nature, extent and condition of the property fully prior to making an offer to purchase, and obtains guidance from the estate agent or independent legal advice in this regard, if necessary.

The agreement of sale will regulate the relationship between the seller, the purchaser and the estate agent, and it is often difficult to remedy any errors or omissions once signed by the parties.

### THE FOLLOWING ASPECTS SHOULD BE OF PARTICULAR RELEVANCE TO YOU:

- **How is the purchase price to be structured?** Will the sale be for cash or subject to financing, either by way of a mortgage bond or otherwise?
- **Does the estate agent know about any defects at the property which cannot be seen on ordinary inspection?** Remember that the Consumer Protection Act has come into force and the rights of the South African consumer are now stronger than ever.
- **Are all the structures on the property built in accordance with plans** approved by the Municipality?
- **Do you know what will be expected of you with regard to municipal rates and services** and sectional title or Homeowners Association levies (where applicable)?
- **Will a specific date for occupation be agreed upon,** against the payment of occupational interest?
- **Fixtures and fittings that will be removed from the property must be set out in the sale agreement** - if you don't do so you may well find that you've unwittingly sold an heirloom that has been with the family for generations!

**FRANK HOLLAND & ASSOCIATES is a progressive firm of property lawyers** who have built a solid reputation in the property industry through expertise, efficiency and unparalleled levels of service. We understand that the property industry does not always keep office hours, therefore we have committed ourselves to being available at any time to assist you with your transaction.

**We look forward to working with you.**

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