

## BUYING PROPERTY IN SOUTH AFRICA

South Africa has one of the best Deeds Registries Systems in the world, which makes it very safe to purchase and sell property in this country. The Estate Agent is involved extensively whilst choosing a property and concluding a Deed of Sale. Once you find a suitable property, the Agent will prepare an Offer to Purchase, which is open for acceptance by the Seller for a certain period of time. The offer is irrevocable for the stipulated period, and if the offer is accepted by the Seller, it becomes a binding Contract.

The following taxes are payable by property owners in South Africa:

1. Transfer duty payable prior to registration, which amount is calculated on the purchase price of the property;
2. Property rates and taxes, payable annually or monthly and calculated on the municipal value of the property and a portion of which needs to be paid in advance before registration to obtain a rates clearance;
3. Capital Gains Tax, calculated on the profit once the property is sold. For a natural person the rate is between 0-18% of the capital gain;
4. The Conveyancer is liable to pay withholding tax of 7,5% of the proceeds of the sale for a property sold for more than R2,000,000.00 as an advance payment on Capital Gains Tax for non-resident Sellers.

The purchase of the property can be financed by obtaining a loan from a Financial Institution in South Africa, which loan will be secured by a First Mortgage Bond to be registered over the property when the property is transferred. Due to the Reserve Bank's exchange control requirements, a non-resident can only obtain a loan for 50% of the purchase price. If you require a loan to be able to finance the property, a suspensive condition will be inserted in the contract making the sale of the property subject to the loan being granted. In the event that the application for the loan is unsuccessful, the contract shall expire and become null and void. Make sure you retain the source document as proof for transferring the cash portion of the sale into the Conveyancing Attorney's trust account as you will need it to repatriate the funds once the property is sold to avoid making any applications to the Reserve Bank to approve the transfer of the funds offshore.

Once the contract is finalized, the Seller appoints a Conveyancing Attorney that will attend to the registration of the transfer of the property and the Mortgage Bond. The transfer process in short, involves the following steps:

1. Once the suspensive condition is fulfilled and the bond registration instruction is received, the transfer documents and the Bond Documents are drawn for signature by the Seller and the Purchaser. Should you wish to leave the country during this time, it is a good idea to appoint an attorney by means of a *Special Power of Attorney* to sign the documents on your behalf in order to avoid the strict signature requirements in the event of the documents have to be signed outside of the RSA.
2. The Bond Cancellation instruction, for the cancellation of the Seller's Mortgage Bond registered over the property is also applied for at this stage. This instruction will contain the Title Deed of the property, which was held as security by the Financial Institution for the loan that was granted.
3. Once the documents are signed and the transfer costs paid, the Conveyancing Attorney will pay the transfer duty and the property rates and taxes required in advance, in order to obtain the transfer duty receipt and the rates clearance;
4. Once the transfer duty receipt, rates clearance, and Bond Cancellation Instruction are received, the Conveyancer can draft the new Title Deed in the Purchaser's name, and the transfer, bond registration and bond cancellation can be lodged in the Deeds Office.
5. The Deeds Office process takes 8 to 10 working days, where after the property is registered in the Purchaser's name.

Steps 1 to 5 take approximately 2-3 months, but delays can be expected should documents need signature overseas.



*Going Beyond*

The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal.

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