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PURCHASING IMMOVABLE PROPERTY AS A FOREIGNER

The South African Immigration Act 23 of 2002 sets out rules for dealing with property transfers which involve parties who are not South African citizens.

Foreigners are permitted to purchase and own immovable property in South Africa; however, such ownership does not imply automatic entry into South Africa and foreigners must still observe and comply with visa requirements.

A foreigner who purchases property in South Africa must be determined to be in the country legally. Ordinarily, a valid visa, work residence or residence permit will fulfil this requirement. If it is, however, determined that the foreigner is in South Africa without any form of visa or permit, it is unlawful for the foreigner to purchase immovable property. A conveyancing attorney would be prohibited from assisting a foreigner with the letting of, or selling of, or in any manner making the immovable property available to an illegal foreign citizen.

The above mentioned must be distinguished from a foreign non-resident who is in South Africa legally with e.g., a visitor's visa, or the foreigner who is not in South Africa and does not reside in South Africa and they are purchasing the property as an investment. An additional requirement is set by the South African Exchange Control Regulations in the form of 3(1)(f) thereof, which must be taken note of. In this section, it is stated that any person in South Africa, who is not ordinarily resident in South Africa, may not be granted financial assistance (a loan) without an exemption being granted by the Treasury, i.e., the Minister of Finance or an officer in the Department of Finance. An application for exemption can take around six to eight weeks to be finalised.

Therefore, a seller, agent or conveyancer must always determine whether the foreigner is in the country legally when the agreement of sale is concluded, as criminal liability may follow negligence in terms of Section 42 of the aforementioned Act.