

Buying and Selling of Real Estate in The Bahamas

The Bahamas is a tourism and finance center and therefore actively supports investments in homes, hotels and resorts. The real estate and building industries play important roles in the development of the Bahamian economy. The government thus aims for a substantial and consistent growth in the area of real estate.

The purchase contract

The agreement of sale or the purchase contract of the real estate is drafted usually with a reservation of the financing and the approval of the government of the application of the buyer.

Some contents of the purchase contract are regulated by law, especially in the *Conveyancing and Law of Property Act (Section 3)*. This act standardizes the obligation to create a so-called *abstract of title* which a complete genealogy of the property titles, from the first proprietor, usually the British crown, to the present one. The buyer has though no right to demand of the vendor the derivation of his property title for a period of more than 30 years. In purchase contracts however, the parties usually exclude the abstract of title.

The financing

The down-payment, usually 10% of the purchase price, will be repaid to the potential buyer if he does not receive the financing or the necessary government permissions.

The financing of purchase of real estate through local Bahamian financial institutions is possible, but each institution has different criteria. Some banks allow credits only to applicants who have a residence permit. In other financial institutions the residence permit plays only a role in deciding the currency (US\$ or BS\$) in which the credit is granted.

The value of the land is determined by an estimation. The lawyer prepares a declaration of the real estate and transmits it to the respective tax authority who also receives a copy of the transmission document – the conveyance - because the purchase price is usually a good indication for the market value.

Requirement of Permit

Foreigners require permission of the *Investments Board* if the real estate is not developed and has an area of five or more *acres* ($1 \text{ acre} = 0.40467 \text{ ha}$) or if the real estate is not a private residence or is not planned to be developed. If such permission is not obtained, the purchase is void. Also, a certificate of the registration or the permission together with the conveyance must be recorded at the *Registry of Records*. Otherwise the registration is void.

Consultation of a lawyer

The purchase contract is normally prepared by a Bahamian lawyer and must be attested by a notary. The lawyer who is authorized to act on behalf his client requires no formal, written authority to complete the proceedings associated with the conveyance. For the closing, the formal conveyance is sent to the seller for signing by courier, if the parties are not present in the Bahamas. Then they are returned to the lawyer of the buyer for the payment of the stamp fee and recording. The stamp fee is paid 50:50 by the seller and the buyer unless otherwise agreed. The lawyer's fee is ordinarily 2.5 % of the purchasing price.

The lawyer will search also for any unpaid real estate taxes or unfulfilled claims resulting from a civil action against the vendor. Both unpaid real estate taxes and judgments in a civil action connected with the real estate of the creditor would expose the buyer to liability for the amount of the unfulfilled claim.

Condominiums

The purchase of a condominium is a special form of real estate purchase. It is effected by a *declaration of condominium* which has to be registered in the *Registry of records*. It contains the exact description of each unit and the rights of their owners. It also includes a complete set of drawings and plans of each floor and cellar of the building.

The effect of lodging the declaration for registration is that the property, to which the declaration relates, is thereupon deemed to be divided in separate units with determined boundaries.

A unit owner has no personal liability for the acts or omissions of a body corporate and his liability for the common expenses is limited to the amounts of the contributions from time to time levied upon him.

A government permit is not required to purchase an interest in a condominium. But the purchase must be registered according to the *International Persons Landholding Act*.

Time-sharing

A buyer of a time-sharing unit receives the right to use a time-share object and its facilities for up to six months per year during a period of at least three years. In *New Providence (Nassau)*, the time-sharing units must be not less than fifty units and on the *Family Islands* not less than twenty-five.

The application for a licence to develop a time-share project has to be addressed to the *Investments Board*. An applicant has to establish his credibility that he has disposed of the financial ability necessary for the completion and operation of his project. Before a licence is granted, the health and fire services and town planning authorities inspect the accommodations and facilities of the time-sharing project.

The owner of a time-sharing project or its managing agent must also record new time-sharing contract with the *Registrar of vacation plans and time-sharing* within sixty days in order to assure the rights of the purchaser. The registration creates in favour of the

purchaser for the period of his participation a claim on the time-sharing project and its facilities.

Right of resignation

Each contract of purchase must contain a right of resignation for seven days. The period of time begins with the execution of the contract or the delivery of the public offer of purchase, depending on which point of time is the later one. The purchaser's contract must further provide that the refund will be made within twenty days after receipt of notice of cancellation. Deductions are only possible for completed acts, such as an overnight stay at the time-sharing of the potential buyer in the time-sharing complex.

The *International Persons Landholding Act* introduced the amenity that foreigners possessing real estate in The Bahamas can receive an *Annual Home Owner's Resident Card* from the *Director of Immigration* after application and payment of a fee. This status gives almost all rights of a citizen to the owner, excluding the right to vote. The card guarantees the entry of the owner and proprietor and his family and their stay in The Bahamas. It is usually given to foreigners who buy a secondary residence for \$500,000 or more.

Taxes

Stamp duty, an important source of income of the government, has to be paid. The amount depends on a variable tariff and the sale price.

Land value	Stamp duty
\$ 0 - \$ 20.000	2,00 %
\$ 20.000 - \$ 50.000	4,00 %
\$ 50.000 - \$ 100.000	6,00 %
\$ 100.000 - \$ 250.000	8,00 %
over \$ 250.000	10,00 %

The owner of inhabited land is required to pay an annual real property tax. It is 1% of the first \$100,000 and 2% of the first \$500,000. For undeveloped land, the real property tax is 1% of the first \$3,000 exceeding part of the market value and 1.5% of the first \$100,000 exceeding part of the market value.

For undeveloped land that are in the possession of foreigners, the real property tax climbs to 7% per year if after the acquisition two years passes and the real estate remains undeveloped. This regulation is meant so stimulate the development and opening of land. Foreigners can apply however for tax relief for undeveloped real estates in *Nassau* and the *Family Islands*. Further exceptions are determined in the *Real Property Tax Act*. Until 2015, the government will not raise any real estate taxes in the area of the harbor of *Grand Bahama* in order to encourage development and to create new jobs there.

Checklist: Acquisition of Bahamian real estate

- Assignment of a lawyer for the title search in order to make sure that a good, clean and marketable property title exists and can be transmitted.
- It is recommended to effect a title insurance policy.
- Exact clarification of how much stamp duty must be paid for acquisition, which sum can be considerable.
- Application to the *Investments Board*, if the vendor is not Bahamian, respectively for registration or a permit of the real estate acquisition.
- Application for *Approved Investor Status* at the *Central Bank*.
- Possibly application for an *Annual Home Owner's Resident Card*.