

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay. The foreground shows a paved plaza with a pattern of light and dark tiles. A dark blue horizontal bar is positioned below the text.

Acquiring Property in Bermuda

Preface

This publication has been prepared for the assistance of anyone who wishes to acquire residential property in Bermuda. It deals in broad terms with the requirements of Bermuda law and, where applicable, the policies of the Bermuda Government. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers. In particular, it is not intended to deal with acquisitions by non-Bermudians married to Bermudians, non-Bermudians acquiring property for their Bermudian children or grandchildren or by corporations since, in each case, special rules apply.

We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking any steps to implement them.

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1. ABOUT BERMUDA

A solitary outpost of beauty and civility in the mid-north-Atlantic, Bermuda enjoys a delightful sub-tropical climate entirely incongruous with its northerly latitude. The proximity of the Gulf Stream accounts for the mild temperatures which, combined with fertile soil, have produced a verdant island, ablaze with the colours of ever-present flowers and shrubs.

Abundant natural beauty has been equally matched by astonishing economic success so that Bermuda can also boast a highly educated and professional work-force, backed by a sophisticated infrastructure of support services, which have combined to transform what was once merely an idyllic holiday retreat into a dynamic centre for international offshore business.

First settled in 1609, Bermuda has its own democratically elected Parliament dating from 1620, the oldest in the British Commonwealth outside the United Kingdom. As Britain's oldest existing colony, Bermuda has close ties with the United Kingdom which is responsible for the foreign and defence affairs of the island and provides a valuable frame of reference for the local legal system. While the latter is independent, English cases are of strong persuasive authority before the Bermuda Courts and, indeed, final appeal lies to the Judicial Committee of the Privy Council.

The eastern seaboard of the United States is two hours flying time from Bermuda with daily flights to major cities. There are flights to London of approximately seven hours' duration most days each week. Ease of access is complemented by efficiency and comfort on arrival. First rate hotels and restaurants and easily available water and land sports afford enjoyment and relaxation to the visiting business people already attracted by the exceptional communications and commercial expertise of the Island.

2. ACQUIRING PROPERTY

The Islands of Bermuda comprise an area of approximately 24 square miles, measuring some 21 miles in length with an approximate maximum width of 1 mile. The physical constraints on residential property will therefore be apparent and the stated intention of the relevant legislation is to preserve the majority of the housing stock and undeveloped residential land for Bermudian ownership. However, the Government recognises that there is a limited Bermudian market for the higher priced properties and it is these properties, together with others that are linked to hotel developments, which may be acquired by non-Bermudians for their private residential use.

3. LICENCE TO ACQUIRE PROPERTY

A non-Bermudian wishing to acquire property in Bermuda must obtain a licence from the Minister of Tourism and Cabinet Office. Applicants must complete the prescribed form and are required to supply a banker's reference and two personal references from people who have known them for at least three years. The referees need not be Bermudian, although this is preferable. Evidence must also be given to show that Bermudians have been given a fair opportunity to acquire the property. Copies of advertisements appearing in local newspapers or online are currently satisfactory evidence.

A licence, when granted, will contain a number of conditions including:

- (a) that the property is used for the private residential use of the licence holder and his household only;
- (b) that the property shall not be developed or altered in such a way so as to add to the number of potential dwelling units;
- (c) that the property may only be rented out or used for profit in accordance with the specific permission of the Minister (Note: this restriction does not apply to licences to hold hotel residences or tourist accommodation or any licences granted to non-Bermudians who have Permanent Resident's Certificates);
- (d) that the property may not be subdivided and its boundaries may not be changed; and
- (e) if the licence holder holds (whether directly or indirectly) more than one other property in Bermuda then he must, within 12 months of the date of approval of the new licence (or such period not exceeding three years as the Minister may allow), divest himself of such other property.

4. LICENCE FEE

The fees for the grant of a licence for a non-Bermudian to acquire property in Bermuda are currently:

- Purchase of a freehold house – 12.5% of the value of the property
- Purchase of a leasehold condo - 8% of the value of the property
- Purchase of tourist accommodation or hotel residence with election to keep for private use - 6.5% of the value of the property or interest
- Purchase of tourist accommodation or hotel residence with election to place in hotel inventory - 0% of the value of the property or interest
- Purchase of either a freehold house or a leasehold condo by a permanent resident's certificate holder – 6% of the value of the property
- Purchase of any other type of land not mentioned above however acquired - 5% of the value of the property or interest

5. ACQUISITION OF A HOUSE

In order for a freehold house to qualify for purchase by a non-Bermudian (other than one with a Permanent Resident's Certificate), it must have an Annual Rental Value ("A.R.V.") at least equivalent to the minimum established by the Government from time to time. Currently the minimum A.R.V. is set at \$126,000.00, ensuring that only the higher valued properties are available for non-Bermudian purchase. (It should be noted that the A.R.V. is established by the Land Valuation Office from time to time for the purposes of levying land tax which is payable as a percentage of the A.R.V. calculated on a sliding and progressive scale; the A.R.V. is a notional value and does not indicate the amount of rent a property would achieve if let on the open market).

Further restrictions exist prohibiting non-Bermudians from acquiring multi-unit dwellings, except those which are already owned by non-Bermudians and provided at least one of the units meets the minimum A.R.V. threshold of \$126,000.00. Non-Bermudians are not permitted to own more than two residential properties (whether a house, apartment or condominium) at any one time, however they may be permitted to purchase a third property on condition that one of the other two properties are sold (or otherwise disposed of) within twelve months (or such longer period up to a maximum of three years as the Minister may approve) following the grant of the licence for the third property.

In general, non-Bermudians will not be allowed to sub-divide land and will be required to sell the property as acquired. An exception may be made where the property has more than one dwelling and the subdivision would result in the non-Bermudian retaining a part of the property which includes a dwelling unit with an A.R.V. in excess of the minimum and selling the remainder of the property to a Bermudian.

6. ACQUISITION OF APARTMENTS OR CONDOMINIUMS

Apartments and condominiums (other than those referred to in section 7 below) are only available for purchase by certain categories of non-Bermudians, being Permanent Resident Certificate holders, holders of residential certificates (“**RC**”) and individuals with a close Bermuda “nexus” (such as the non-Bermudian parent or child of a Bermudian). The minimum A.R.V for such persons without a Bermuda “nexus” is \$25,800. There is no minimum for those with a Bermuda “nexus”

Under Government’s Economic Investment Residential Certificate (“**EIRC**”) policy, a person who makes an investment of not less than BD\$2.5M in a specified range of assets is entitled to apply for an RC. Since Bermuda real estate is one of the specified assets and the RC will be granted on proof of intention to make the investment (subject to meeting other character and health related criteria), this policy enables non-Bermudians who are not RC holders to acquire leasehold condominiums valued at around \$2.5M or more. The cost of the licence fee and stamp duty payable on the purchase price may be claimed as part of the investment value.

7. ACQUISITION OF TOURIST ACCOMMODATION OR HOTEL RESIDENCES

A non-Bermudian may be permitted to acquire a “hotel residence” which is property intended for private residential use that was constructed as part of a hotel development.

A non-Bermudian may also be permitted to acquire tourist accommodation. Tourist accommodation is accommodation within the grounds of a hotel such as a hotel room or suite or fractionally owned unit. Where the non-Bermudian is an individual, the tourist accommodation may only be occupied by the licence holder, his family and guests who are staying with him or his family or, if the tourist accommodation is being managed by a property management company, paying transient guests. Where the non-Bermudian is an exempted company, the tourist accommodation may only be occupied by a tenant pursuant to a rental agreement which has been approved by Government, to a paying transient guest if the tourist accommodation is being managed by a property management company, or a transient guest with the permission of the exempted company.

In the case of fractionally owned tourist accommodation, licence holders must agree on a defined reservation schedule for use of the unit during the year.

An application for a licence to acquire or hold tourist accommodation or a hotel residence must include an election as to whether the applicant will place the accommodation or residence in the hotel inventory or keep the accommodation or residence for his private use including, in the case of a hotel residence, renting it out privately. The land-holding charge will be calculated according to this election (0% where the accommodation is placed in the hotel inventory and otherwise 6.5%). If, following an election to put the accommodation or residence in the hotel inventory, the applicant wishes to keep it for private use only, the Minister must be notified and the applicant will be required to pay the licence fee at the rate applicable for private use.

8. ACQUISITION OF UNDEVELOPED LAND

Save in limited circumstances (generally where the non-Bermudian has a Bermudian nexus (Bermudian spouse/parent/child) the sale of undeveloped residential land to non-Bermudians is prohibited.

9. LETTING OF PROPERTY

A non-Bermudian (other than one who holds a Permanent Resident's Certificate who may let without restriction) who owns a house or a condominium must obtain the permission of the Minister responsible for Immigration in order to let the same. Permission will seldom, if ever, be granted for a period in excess of twelve months in the first instance and renewal of permission will be considered on its merits at the time. Further, permission will not normally be given if the owner intends to reside in Bermuda during the rental period. A Government tax (currently 7.25% of the rent paid or \$72.50 whichever is greater) will be payable for the permission.

A non-Bermudian who owns tourist accommodation may rent it to paying transient guests provided that this is done by placing it in the hotel inventory.

10. ACQUISITION BY WAY OF INHERITANCE, VOLUNTARY CONVEYANCE ETC.

Generally a non-Bermudian will not be granted a licence to hold real estate in Bermuda as a result of voluntary conveyance, deed of gift, devise, inheritance, purchase, lease in excess of five years or any other means of acquisition unless the property is one that is available for purchase by non-Bermudians (i.e. is over the requisite A.R.V.). However, special rules apply in the case of non-Bermudian spouses where the property is owned by the other spouse and non-Bermudian children of a Bermudian where the property is owned by the Bermudian parent.

11. TITLE TO PROPERTY

Generally a non-Bermudian who is granted a licence to acquire property in Bermuda will be required, under the terms of that licence, to hold the property in his individual name and will not be permitted to hold title through a company or a trust. This is intended to prevent property from remaining in non-Bermudian ownership indefinitely.

12. TAXES

At the date of this publication, Bermuda corporate income tax (CIT) applies only to certain Bermuda constituent entities that are members of Multinational Enterprise Groups with consolidated financial statements showing annual revenue of at least 750 million Euros for at least two of the last four fiscal

years. For all Bermuda companies which are out of scope of CIT, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by such Bermuda company or its shareholders, other than shareholders ordinarily resident in Bermuda. As previously mentioned, Land Tax is payable by a property owner and is calculated as a percentage of the A.R.V. Certain deeds, for example, conveyances of freehold and leasehold property and mortgages, attract ad valorem stamp duty. Further, ad valorem stamp duty is payable on the Affidavit of Value of the estate of a person who dies owning property in Bermuda, but only upon the value of the Bermuda asset.

13. CONCLUSION

This publication is intended to cover the general aspects of acquiring property in Bermuda. For further clarification or more detailed information please contact our Real Property Department.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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