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# INTERNATIONAL LAWYERS NETWORK



## HALSBURY CHAMBERS

Buying and Selling Real Estate in the Bahamas



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## PURCHASE OF BAHAMIAN REAL ESTATE BY NON- BAHAMIANS

Columbus came to The Bahamas when he first discovered the New World, landed on San Salvador in 1492. Over the centuries, the islands of The Bahamas became key waypoints for explorers and adventurers which connected the Old World with the New. In the late 17<sup>th</sup> century, the islands became the hotspots of pirates and privateers who marveled over landscape and mass of the Bahama Islands.

The 100,000- square-mile (258,998-square-kilometer) archipelago of The Bahamas begins just 50 miles (80km) off Florida's east coast at the Island of Bimini and stretches more that 500-miles (840km) southeast in a chain comprised of some 700 islands and cays in the Atlantic Ocean. Total land mass is estimated at 5,382 sq. mi (13, 939 sq. km). The capital, Nassau is on New Providence, while Freeport and Lucaya combined on Grand Bahama are regarded as the nation's second city.

The Bahamas has proven to be one of the top islands in the Caribbean hemisphere, when it comes to the purchase of real estate. To this end this article seeks to address two aspects of purchase of Bahamian real estate by non-Bahamians: -

- (i) what is required under Bahamian law for non-Bahamians desirous of purchasing real estate in The Bahamas; and
- (ii) to identify tax implications imposed on non-Bahamians with respect to their

purchase and/or ownership of Bahamian real estate.

From the outset, real estate in The Bahamas presents a compelling buying opportunity for non-Bahamians potential investors from abroad. Purchasing real estate in The Bahamas can diversify an investor's investment portfolio and provides a bit of a shelter form economic siege, with a built-in benefit of permanent residency granted by The Bahamas Government.

It is customary that within a matter of weeks, foreign buyers could have residency status, provide that the purchase of the real estate is at least \$1.5 million net or more.

### 1. Intent of Purchase

In any potential purchase of real estate in The Bahamas will require the drafting and preparation of Agreement of Sale. For the most part, a Realtor and/or Broker would facilitate in the location of the potential property and/or real estate, but once the real estate has been negotiated upon in terms of the purchase price and time limit for completion etc., it is mandatory under law that an Agreement of Sale be prepared setting out the agreed terms between the Seller and Buyer. In addition to the agreed terms which must be set out in the Agreement of Sale, there are additional requirements which must be adhered to by non-Bahamians whom seek to purchase property and/or real estate in The Bahamas.



**Realtors/Brokers Commission Fees on Real Estate**

i) Undeveloped property/real estate	10% of the agreed purchase price
ii) Developed property/real estate (whether residential or commercial)	6% of the agreed purchase price
iii) Family Island property/real estate	10% of the agreed purchase price (whether land, home or commercial)

If a non-Bahamian/foreigner does not own property in The Bahamas already, and wishes to purchase a piece of property and/or real estate in their own individual name, then an application must be obtained for Certificate of Registration or Permit from The Bahamas governmental agency. The application must be made to the Bahamas Investments Authority (IB) and is applied after the completion of the sale. The property and/or real estate being purchased must not be commercial property, must be less than five (5) acres and it cannot be titled in the name of two or more persons who are not related (i.e. the persons must be husband and wife or brother and sister/parent and child (with the same last name) or a company.

If the property and/or real estate is commercial property and is being purchased by a company or unrelated persons or consists of more than five (5) acres, then a Permit is necessary. The Permit also must be obtained from the IB before the purchased transaction is complete.

**2. Requirements**

The application for the Permit and the Certificate of Registration requires that the following be submitted to the IB in support of the same: -

- Copy of National Photo Identification (namely, Passport, Driver’s Licence etc.);
- Police Record/Certificate from Country of residence;
- Character Reference;

- Copy of Site Plan of land being acquired/purchased - this will normally be attached to the Agreement for Sale or the title documents for the property;
- Bahamas Immigration Status (confirm if the non-Bahamian and/or foreigner has obtained permanent residency status or any other status in The Bahamas);
- Social Security Number/National Identification Number;
- Evidence of payment of real property taxes for the property being purchased- this is normally secured by the Attorney representing the Seller and provided to the Buyer’s Attorney;
- A Certificate of Incorporation/Registration, if the applicant is a Bahamian Registered Company or a Foreign Company Registered under the Foreign Company provisions of the Companies Act of the Commonwealth of The Bahamas;
- **Financial Reference** – normally obtained from a bank/financial institution whom the Buyer has an account for at least three (3) to five (5) years;
- **Source of Wealth** – a letter obtained from the bank/financial institution holding the account in the name of the Buyer, which will be utilized as the source of funds for the purchase of the real estate.
- The Buyer will also be required to complete a **KNOW YOUR CLIENT** profile



Form for submission to his Bahamian Attorney.

Under the International Persons Landholding Act, 1993, amended in 2007, The International Person Landholding Act made it easier for non-Bahamians and companies under their control to own property.

- A non-Bahamian or permanent resident who purchases or acquires an interest in a condominium or property to be used by him/her as an owner-occupied property, or for construction of premises to be used as an owner-occupied property, must apply to the secretary to the Investment Board (IB) to register the purchase.
- Upon receipt of the above, the acquisition is registered, and a certificate of registration issued.

- A permit to acquire property is required if the property is undeveloped land and the purchaser would become the owner of two or more contiguous acres. A permit is also required if the non-Bahamian intends to acquire land or an interest therein by way of freehold or leasehold, when the acquisition is not in accordance with item 1.
- Non-Bahamians who own homes in The Bahamas may apply for an annual homeowner’s residence card. This card entitles the owner, spouse and dependent child or children to enter and remain in The Bahamas for the duration of the validity of the card (one year). This facilities entry-it does not confer resident status in The Bahamas.

**FEE SCHEDULE APPLIED:**

<b>(i) Application for Registration</b>	<b>B\$25.00</b>
<b>(ii) Application for Permit</b>	<b>B\$25.00</b>
<b>(iii) Certification of Registration</b>	<b>B\$250.00</b>
<b>a. \$50,000 under</b>	<b>B\$50.00</b>
<b>b. \$50,000.01 up to \$101,000</b>	<b>B\$75.00</b>
<b>c. \$101,000 and over</b>	<b>B\$100.00</b>
<b>(v) Annual homeowners'</b>	
<b>a. residence card</b>	<b>B\$500.00</b>

**3. Joint Tenancy**

As with any real estate whether purchased jointly or solely, there are legal implications which follows regarding the type of ownership the real estate falls under. It is said, *“A gift of lands to two or more persons in joint tenancy is such a gift as imparts to them, with respect to all other persons than themselves, the*

*properties of one single owner”*<sup>1</sup>. Although as between themselves joint tenants have separate rights, as against everyone else they are in the position of a single owner. A joint tenancy is known by its four (4) principal features, in particular the right of survivorship and the *“four unities”*.

<sup>1</sup> Megarry & Wade- The Law of Real Property, Sixth edition, Sweet & Maxwell.



1. The right of survivorship: This is, above all others, the distinguishing feature of a joint tenancy. On the death of one joint tenant, his interest in the land/real estate passes to the other joint tenants by the right of survivorship. This process is said to continue until there is one survivor, who then holds the land/real estate as a sole owner. By law, joint tenancy cannot pass under a Will or intestacy of a joint tenant.
2. The four unities must exist, namely: -
  - i) Unity of possession;
  - ii) Unity of interest;
  - iii) Unity of title; *and*
  - iv) Unity of time

#### **4. Tenants-in-Common**

The other form of ownership is called and known as tenancy in common. It is said legally that tenancy in common differs significantly from joint tenancy.

Unlike joint tenants, tenants in common hold undivided shares in property and/or real estate. Each tenant in common has a distinct share in property and/or real estate which has not yet been divided amount co-tenants. The only fact which brings them into co-ownership is that they both have shares in a single property which has not yet been divided among them.

Similarly, there is no right of survivorship, accordingly, the size of each tenant's share is fixed finally and is not affected by the death of one of his companions. When a tenant in common dies, his interest passes under his will or intestacy, for his undivided share is disposed of as he wishes. For instances, where a husband and wife are beneficial joint tenants and one of the spouses dies intestate, the survivor will acquire the property by right of survivorship and will in addition be entitled to a statutory

legacy. On the other hand, if property and/or real estate is owned by the spouses by virtue of tenants in common, the survivor will receive only the statutory legacy, i.e. only the portion to which the spouse has contributed to the property and/or real estate.

In comparison to the principal requirements set out in determining whether joint tenancy exists, it appears that only the unity of possession is essential or may be present in a tenancy in common in establishing ownership.

#### **5. Transfer of Title on Death**

If property is purchased in the name of an individual, there are no transfer taxes on death in The Bahamas. On the death of the owner, the only thing that will have to be done is to probate the Estate. If the property is purchased by joint owners, then the surviving joint owner will automatically be the sole owner of the property. No probate of the deceased owner's estate is necessary. On the death of the last joint owner, however, his estate will have to be probated. If the property/real estate is purchased as tenants-in-common then on the death of one tenant, that person's share of the property will devolve upon the person entitled thereto under the last will and testament of the deceased tenant or according to the laws of intestacy, if he died intestate (without a Last Will and Testament).

#### **6. Title held by a Company**

If the property/real estate is purchased in the name of a Bahamian Company, then the following requirements should be met:

- The company must first be incorporated;
- The company must first be a Bahamian Company (domestic) with the majority of shares held by a Bahamian citizen. Alternatively, an application can be made to the Central Bank of The Bahamas with regards to a foreign person having



ownership of the real estate/property to be designated as a resident of The Bahamas.

- Shares of the incorporated Company will have to be issued – and these will devolve upon the person entitled thereto upon the death of the shareholder under the provisions of the Last Will and Testament of the deceased or the laws of intestacy (if the deceased died without a Last Will and Testament).
- If shares are transferred, taxes are payable on such transfer (see below).
- If the property is transferred to the owner of the company, taxes are also payable (see below).

A Bahamian company can be incorporated by a non-Bahamian as an International Business Company and it will be allowed to do business in The Bahamas. Central Bank Approval is required before shares in a company can be issued to a non-Bahamian. In this regard, the information required above for the Certificate of Registration is also required for submission to Central Bank.

Alternatively, some persons have opted to form a company in the Country where they live (i.e. United States) and have the company registered under the foreign company provisions of the Companies Act in The Bahamas. Once the company is registered then the company can proceed to operate in The Bahamas. The Central Bank of The Bahamas will require the same information stated above for the Shareholders of the company.

In any event, the Company whether it is a Bahamian Registered Company (i.e. IBC) or a Foreign Company registered under the Foreign Company provisions of the Companies Act, will have to be in existence before it can enter into an Agreement for Sale to purchase Bahamian

property/real estate. Alternatively, if there is an urgent need to pay the deposit and to secure the purchase of the property/ real estate, the Agreement for Sale can be entered into by the potential Buyer with a provision in the said Agreement providing a right reserved therein to assign the sale of the property/real estate to the company once it has been established.

The only advantage to having a company is that there is limited liability protection (no one can go beyond the corporate veil of incorporation if they choose to sue the owner of the property, to attach the owner's personal assets. This is usually the case where the property is being used as commercial (i.e. rental) property and is constantly rented out for profit.

### **7. Legal Fees and Stamp Duty**

Legal Fees associated in the purchase and sale of all real estate transaction in The Bahamas are normally 2.5% for each party- Seller and Buyer.

There are also charges imposed and implemented by The Government of The Bahamas in relation to Stamp Duty on all properties/real estate prepared by a deed of conveyance assignment or transfer of realty at two and a half per cent (2.5%) of the amount of value of the consideration. Provided that properties over fifty thousand dollars in value became liable to Value Added Tax (VAT) at 7.5%.

With regards to Leases on every property/real estate the stamp duty imposed is two and a half per cent (2.5%) of the annual rent reserved.

The normal procedure for a property transaction is that the Seller and Buyer each pay their own legal fees and one half of the stamp duty on the value and/or current market value of the sum that would be expected to be realized on the sale of any property/real estate



by the seller to the buyer. The commission of the Broker and/or Realtor is normally payable by the Seller. This, however, is all subject to agreement between the parties and can be drafted in the Agreement for Sales differently, if both Seller and Vendor so desire.

#### **8. Tax Implemented on Real Estates**

On or about March 2013, the Government of The Bahamas implemented new real property tax incentives, to provide tax relief to both Bahamians and non-Bahamians purchasing property/real estate in The Bahamas. The objective of the new tax incentives is to provide tax relief and to update the real property tax register. This new legislation and tax incentive came into effect on the 1<sup>st</sup> March 2013, which provides as follows: -

- All back taxes (if any) will be waived for owners of residential properties valued above the \$250,000.00 exemption threshold and owners of commercial properties, who have never received a tax

bill, if they register their properties with the Chief Valuation Office by the 30<sup>th</sup> June 2013; **and**

- Owners of residential properties who remain current with their payments over the next three (3) years will receive a 5% rebate of their annual real property tax assessment.

It is certainly true that real estate purchase in The Bahamas is a purchase of paradise. Not only, by the unique geographical location of The Bahamas, just 50 miles off the coast of Florida, but The Bahamas is strategically positioned to the wider Americas. This is an undeniable advantage.

Its proximity to the US, Central and South America places The Bahamas in an enviable position to serve both its traditional and emerging markets and presents an opportunity to link commercial and financial interests of non-Bahamians desirous of purchasing real estate.