

# INVEST IN REAL ESTATE IN VIETNAM

INVESTOR GUIDE



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# THE LAW ON HOUSING

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Thanks to Vietnam's Land Use Rights (LUR), foreigners are allowed to use and control the land they lease with a leasehold period of up to **50-70 years**

## FOREIGNERS



now have legal right to purchase property, but are not allowed to purchase land in Vietnam

## FREEHOLD OWNERSHIP



is not permitted for foreigners unless a foreigner is **married to a Vietnamese national**.

## THE LEASEHOLD PERIOD

is **renewable** and **extenable**



# WHO IS ELIGIBLE?

## FOR HOME OWNERSHIP IN VIETNAM

(1)

Individuals including foreign citizens, who permanently or temporarily residing in Vietnam having valid documentation permitted to enter Vietnam, except diplomatic immunity and privilege; who have valid passport, visa to enter Vietnam, and proof of marriage / single status

(3)

Foreign enterprises, branches and representative offices of foreign enterprises, foreign investment funds, and branches of foreign banks which are operating in Vietnam;

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(1)

Invest in housing construction projects in Vietnam, as prescribed in this law and relevant legal regulations;

(2)

Buy, purchase, and rent, receive or inherit commercial houses including apartments and separate houses in housing construction projects, except for projects in the areas of national defense and security as prescribed by the Government.



(2)

Overseas Vietnamese (Vietnamese citizens, original Vietnamese who are now currently residing or living for a long time in a foreign country);

(4)

Foreign entities who invest in project-based housing construction in Vietnam as prescribed in this Law and corresponding regulations of law;



## TYPES OF HOME-OWNERSHIP

### OF FOREIGN ENTITIES IN VIETNAM



# CONDITIONS

**FOR HOME-OWNERSHIP, RIGHTS, AND OBLIGATIONS OF FOREIGN ENTITIES WHEN OWING HOUSES IN VIETNAM:**



***Foreigners buying houses in Vietnam must be:***

**(1)**

Allowed to enter Vietnam legally;

**(2)**

Not granted diplomatic immunity and privileges as prescribed by the law.

***Foreign entities investing in housing construction projects in Vietnam must have:***

**(1)**

The Certificate of Investment Registration;

**(2)**

Houses are built in the projects as prescribed in this law and relevant legal regulations.

***Foreign enterprises, branches and representative offices of foreign enterprises, foreign investment funds, and branches of foreign banks that are operating in Vietnam must have:***

**(\*)**

The Certificate of Investment Registration or other documents proving their legal operation in Vietnam (hereinafter referred to as the Certificate of Investment Registration) issued by competent agencies in Vietnam.



## WHAT ARE THE

# METHODS?

**Foreigners can own a house by**

**(1)**

investing in project-based housing construction in Vietnam, including development of commercial housing invested by a real estate enterprise for lease, lease purchase or

**(2)**

Sale, and renovation and reconstruction of old housing areas and/or apartment buildings.

**(3)**

Purchase, lease-purchase, receive or inherit commercial housing in the project for housing construction



## INVESTMENT IN PROJECT-BASED HOUSING CONSTRUCTION

**Step 1** - Obtain a decision/approval on investment policies

**Step 2** - Planning appraisal, housing construction project approval

**Step 3** - Developing the housing construction project

**Step 4** - Contract for lease, lease purchase or sale conduction

## WHAT ARE THE

# PROCEDURES?

***Depending on the methods to own a house in Vietnam, foreigners shall have to choose either the following procedures to comply with.***

## BUY, RENT AND PURCHASE, RECEIVE OR INHERIT

**Step 1** - Sign contract at the notarized office or authenticated by competent authorities for the agreement on housing sale, lease, lease purchase, gift

**Step 2** - Apply for a certificate for the change in ownership at competent authority

# RIGHTS AND OBLIGATIONS

## OF FOREIGN ENTITIES AS HOMEOWNERS

**Foreign entities who invest in project-based housing construction in Vietnam** are entitled to exercise rights of homeowners as prescribed in Article 10 of Law on housing, if his/her house is built on a piece of leased land, he/she is only entitled to lease that house.

**Foreign individuals who are allowed to enter Vietnam are entitled to exercise rights of homeowners similarly to Vietnam citizens provided that he/she comply with following regulations:**



- The foreign individuals are eligible for homeownership as agreed in agreements on housing sale, lease purchase, gifting, or inheritance for **not more than 50 years**, from the day on which they are granted the Certificate and they may be also granted an extension as prescribed in regulations of the Government; the duration of the homeownership must be stated in the Certificate.
- If a foreign individual marries a Vietnamese citizen or an overseas Vietnamese, he/she qualifies for **stable and long-term homeownership** and has all the rights of a homeowner similar to Vietnamese citizens

The foreign organizations are eligible for homeownership as agreed in agreements on housing sale, lease purchase, gifting, or inheritance for not longer than the duration stated in their Certificate of investment; Including extension duration, the duration of the homeownership shall be determined from the day on which the organization is granted the Certificate and stated in such Certificate

# LIMITATIONS OR RESTRICTIONS

There are a number of limitations and restrictions that apply to foreigners if they intend to own a house in Vietnam which include the (total) number of houses to be entitled, which is now



up to **30%** of the total number of apartments in a building;



up to **250 houses** regarding separate houses including villas, or row houses;



up to **10%** of the houses of a project having **less than 2500 houses** in an area whose population is equivalent to a ward-administrative division.

- Foreigners are unable to purchase or own a house that is within **national defense areas** and **security requirements**.
- In addition, a foreign individual is entitled to lease a property for lawful purposes provided that she/he notifies the relevant authorities.
- The term which is set as a 50-year lease can be extended or transferred prior to its expiration in the event of purchase, lease purchase, inheritance, or gifting.

# COMMON LEGAL TERMS

## SALES & PURCHASE AGREEMENT ("SPA")

The SPA is a **legally binding contract** between the buyer and developer to prove that a house or apartment is sold to the buyer by the developer.

The SPA is also used as **evidence of ownership** of the house or apartment before the house ownership certificate has been granted to the owner. It is used for applying for house ownership certificate for the owner.

The template of the SPA is by the standard template as provided by the Ministry of Construction and is to be registered with the Consumer Protection Bureau under the Ministry of Industry of Trade.

As such, the SPA is a generally standard template that is not frequently changed or amended. The owner of the apartment/house shall have the following legal rights:

- The right to inviolability of houses under his/her lawful ownership.
- To use houses for residential and other purposes not legally banned.
- To be granted certificates for houses under his/her lawful ownership.
- To sell, transfer sales & and purchase contracts, lease, put for lease-purchase gift, exchange, bequeath, contribute as capital, lend, permit stay at, or authorize management of, his/her houses.

**In the case of donation or bequeathal of houses to subjects ineligible to own houses in Vietnam, such subjects are only entitled to the value of such houses:**

- To use public facilities in the housing area under Housing laws and other relevant laws.
- To maintain, renovate, demolish, or rebuild his/her house as prescribed in Housing Law and law on construction.
- To receive the compensation as prescribed in regulations of law or payment according to fair market price when their house is demolished, imposed compulsory purchase order, or commandeered by the State for national defense and security purposes; for socio-economic development purposes, or in the state of war, state of emergency, or disaster situations.
- Rights to file complaints, denunciation, or lawsuits over violations against his/her lawful ownership and other violations against law on

## HOUSE OWNERSHIP CERTIFICATE

The **"House Ownership Certificate"**, which stands for **"Certificate of and use rights or house and land-attached asset ownership"** is the certificate granted by the State Authority to certify/recognize the ownership of an eligible individual/organization over his/her/their land or house. It is commonly referred to as the **"ownership certificate"** or **"pink book"**.

The ownership term of foreigners is **50 YEARS** from the day on which the ownership certificate is granted. However, under the new residential housing law, there are some restrictions for foreigners as per the following:

- He/she may not buy, rent purchase, receive, inherit, or own more than 30% of apartments in an apartment building; or more than 250 houses regarding separate houses including villas, row houses in an area whose population is equivalent to a ward-administrative division.
- In case the foreigners receive or inherit house(s) that exceed the number of houses prescribed above, he/she only receives the value of that house(s).
- The ownership term of foreigners is 50 years, from the day on which the ownership certificate is granted. They may apply to extend the term of ownership and it shall be subject to the approval of state authority.
- If a foreign individual marries a Vietnamese citizen or an overseas Vietnamese, he/she qualifies for stable and long-term home ownership and has all the rights of a homeowner similar to Vietnamese citizens.
- During the ownership term, the homeowner is entitled to gift or sell their house(s) to individuals/entities eligible for homeownership in Vietnam; if not, upon the expiry of the ownership term, their house(s) shall belong to the State.

## RED INVOICE / VALUE ADDED TAX (VAT) INVOICE

"**Red invoice**" is a legitimate invoice which is legally called "**Value Added Tax Invoice**".

It is issued by the seller to state that information on goods/services are sold/ provided in accordance with laws, for organizations/ individuals to declare and pay Value Added Tax.

Currently, the Value Added Tax (VAT) tariff is **10%** of the house/apartment price.

In comparison, a receipt is a form of invoice showing a payment transaction has been completed for the amount issued by the seller to the buyer. It is to help both contractual parties record that a certain amount has been paid by the buyer to the seller which is lawful and recognized by laws. Later on, a red invoice shall still be issued by the seller to the buyer for taxation purpose.

## MAINTENANCE FEE

The "maintenance fee", commonly referred to as a "sinking fund", is a fund contributed by buyers of development to **maintain commonly owned areas** of the development. It is used for maintenance, small repairs, medium repairs, and overhauls of commonly owned areas to preserve quality. Currently, the sinking fund is **2%** of the house/apartment price before VAT.

## MONTHLY MANAGEMENT FEE

The "monthly management fee" is a fee contributed by residents to **managing operations of the development**, such as operating the elevator system, and generator and providing services for the building such as security, pest control, rubbish collection service, etc.

Management Fee is calculated per **Apartment / Villa area**.

# PAYMENT SCHEDULES

## HOW DO I MAKE PAYMENTS FOR MY PROPERTY?

Foreign investors are recommended to set up a local bank account to transfer payments for their property to the Developer's bank account. Below are some international banks with branches in Vietnam:

- Standard Chartered
- Citibank Bank
- ANZ
- HSBC
- Bank Of China
- Shinhan bank

## WHAT ARE THE PAYMENT SCHEDULES?

Generally, for projects under construction, the payment scheme is decided by developers and agreed upon with purchasers.

Housing laws limit the maximum collection before handover to be up to **70%** for local Vietnamese developers, and up to **50%** for foreign developers. The law also stipulates that 5% is to be collected upon issuance of the pink book.

A default interest shall be applied as agreed in the SPA. If this violation exceeds the time given in the SPA, the developer has the right to unilaterally terminate the SPA and forfeit an amount.

### *The following taxes apply to property sales transactions*

#### VAT TAX

**10% VAT** is taxed on any sale of property by locals or foreigners.

#### ADMINISTRATION FEE

A minimal administration fee is to be granted ownership certificate at the current regulation.

#### REGISTRATION TAX FOR OWNERSHIP

**0.5% registration tax** for obtaining the house ownership certificate on the property value.

#### TRANSACTION FEE

**when selling the property (2% on the selling price)**

If personal income is earned through the assignment or resale of apartments or houses, a **2%** transaction fee has to be paid on the transacted value (the selling price)

Please note that tax regulations are subject to change by the relevant authorities. For the most updated tax regulations, please consult a tax consultant.

### *The following taxes apply to property lease transactions:*

If personal income is earned through the rental of a house/apartment, **5% VAT** and **5% PIT** have to be paid on revenue.

For rental income exceeding **VND 1,500,000** per month, a business a license tax of **VND 1,000,000** per year applies.

# DEVELOPER DEFAULTS, WHAT ARE MY RIGHTS?

## LATE HANDOVER

If the developer does not hand over the unit as per the date agreed in the SPA, the developer has to pay default interest on the paid amounts to the purchasers.

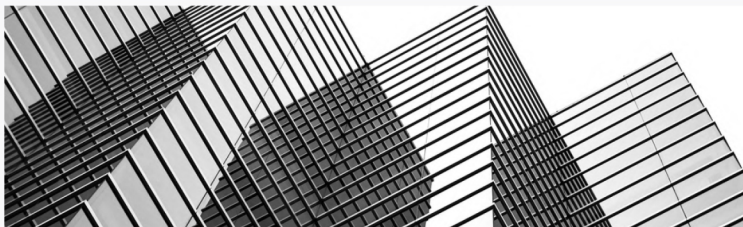
This default interest rate will be equal to the default interest rate applied to the purchaser.



## FAILURE TO COMPLETE

If the developer does not complete the project in the number of days from the agreed handover date as stated in the SPA, the buyer has the right to unilaterally terminate the SPA.

In such a case, the developer shall refund all paid amounts without interest to the buyers and compensate a default amount to the buyers which is equal to the purchaser's forfeited amount.





# RECEIVING MY PROPERTY

## WHAT IS THE HANDOVER PROCESS?

- Upon the completion of the building, the developer shall serve a Handover Notice to the buyer to indicate the date of handover for the units and the outstanding amount to be paid before taking over the units.
- The buyer pays the outstanding amount as per the Handover Notice.
- On the handover date, the buyer will check the unit for defects and take over the units by signing the Minutes of Handover. The buyer will also sign the application for a pink book, electricity, water, and telephone contracts with supplier at the handover date.

## WILL THERE BE PROPERTY MANAGEMENT SERVICES?

Some developers will offer property management solutions, though generally owners source independent property management companies depending on their preferences and requirements

## ARE THERE AFTER-SALES SERVICES PROVIDED?

After the unit is handed over, the developer is obliged to provide the following services:

- **Warranty on the units under laws and agreed in the SPA**
  - Apartment Fittings: up to 1 year
  - Building Structure: from 3-5 years from the date which the building is put into operation
- **Submitting the application file for obtaining pink book for buyers**
  - Additional after-sales services relating to assignment, rental, furnishing, etc., will be supported within the capabilities of the Developer and regulations on a case-by-case basis.

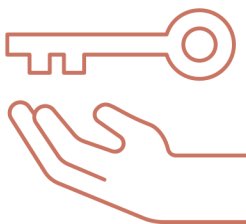
## INSURANCE FOR MY PROPERTY

By law, the Developer is not obliged to provide insurance for private areas of the residential house/ apartment. As such, owners of the house/apartment/ are recommended to buy insurance for their house/ apartment in accordance with the law.

# RENTING OUT MY PROPERTY

## HOW DO I FIND A TENANT?

- Under the new law, foreigners are entitled to enter into a lease contract with tenants in Vietnam.
- Generally third party management services assist in the tenaning, negotiation, management of hthe property to ensure maximizing revenue



## HOW DO I COLLECT RENTAL INCOME?

- The method of collecting rental income is a decision agreeable by the Landlord and tenant. Generally rental income is received by cash or bank transfer.
- Typically, the Landlord will request 1 months of deposit.
- The landlord retains the right to instruct the management of the building to cut off water and electricity provision to the unit if the lessee fails to pay rent.

