

**SUBJECT: Purchasing an Apartment in Israel**

**DATED: February 2015**

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Purchasing an apartment in Israel, whether for investment, residence, vacation, one's children or long term aspirations, is the ultimate expression of a person's Zionism and support for the Jewish State. Although there are many similarities between the purchase of real estate in countries such as the U.S. and that of Israel, there are also numerous, significant differences and, therefore, it is important to understand the process in order to best be prepared to address issues which may arise. The following is a general summary of the process of purchasing an apartment in Israel.

Many prospective purchasers from abroad are introduced to particular projects by word of mouth or advertising – most of those purchases tend to be in new projects whether in the planning state (e.g. "on paper") or recently completed construction. Others learn of particular apartments via brokers. There are differences in the process, rights and costs depending upon the nature of the property, its location, whether a new apartment or a second-hand property.

One of the first unique practices in Israel, is that Israeli lawyers often represent both sides of the purchase and sale – something unheard of in many other countries. The advantage of the arrangement is one of cost and the smoothness and simplicity of "negotiations". The significant disadvantage is that a lawyer who must be "fair" to both sides is not advocating on your behalf – we recommend that you decline that opportunity.

### **The Process**

Once you find an apartment in which you are interested, you may consider how to best lock in the deal with the Seller. For your information, agreements to purchase real estate in Israel, must generally be in writing in order for them to be enforceable. For that reason, sellers of real estate or the real estate brokers often try to pressure the buyer to sign a Memorandum of Understanding (Zichron Devarim). Please note that just as a written agreement is required to be binding, the "informal" Memorandum of Understanding ("MOU") is a binding contract which must be reported to the tax authorities. We strongly recommend against your signing an MOU – certainly unless it is first reviewed by a lawyer on your behalf. Typically, and almost by definition, an MOU does not have many of the substantive provisions contained in a detailed contract (it is usually a brief, simplistic document pursuant to which A agrees to sell X property to B for Y amount of money. The MOU will typically not include verification of title, freedom from liens, milestones for payments subject to, for instance, delivery of documents or registration of a caveat, right of inspection, etc. We strongly recommend that you have your lawyer negotiate the terms of a definitive purchase contract with the seller's lawyer and not to sign any document before that contract is acceptable to your lawyer.



### Examining the Seller's Rights

The next step in purchasing a home is for your lawyer to examine whether the seller actually holds the rights to the property, whether there are any conditions to that ownership, whether the ownership is in the form of registered title in the Land Registry or a long term lease in the Israel Lands Authority or with the Housing Construction Company and whether there are any liens or caveats on the seller's rights or conditions that would restrict sale. Israel does not have a concept of title insurance (some companies had attempted to bring the idea to Israel but it did not really take off). The responsibility of investigating title and liens as well as registration of title is the bailiwick of the lawyers.

Without performing this basic examination, a buyer risks transferring money to someone who cannot deliver clean title to the property. Our law firm was recently retained by an American who signed an MOU written by the purported owner of an apartment in Jerusalem, pursuant to which the American paid the fellow more than a half million dollars on account of the purchase price – when the “seller” repeatedly stalled signing a definitive contract and no progress was made in construction, we were retained and, upon our investigation, learned that the “seller” did not actually own the property.

Your lawyer will then determine the legality of the property in the Municipality's property files, i.e. no building violations have been recorded and no Demolition Orders have been issued against the property, whether there are municipal claims against the property that run with the land, etc.

### Sales Contract

The sales contract reflects the detailed agreement reached by the parties as negotiated between the lawyers for the seller and purchaser including their future undertakings. A typical contract includes;

- (a) Description of the Property. The contract should detail the Property as it is registered in the Land Registry (or other registry), including the percentage in the joint property of the building and attached property, such as parking spaces, garden and storage areas (what is not detailed in the contract is usually not included in the purchase).
- (b) Payment Schedule. This section will include a detailed list of the amounts to be paid at the signing, the amount to be paid when a caveat is registered, when possession is given, when Powers of Attorney are delivered and when title to the apartment is finally transferred to the buyer.
- (c) Agreed Compensation. In the event that one of the parties to the contract does not honor their commitments, s/he will have to compensate the other party – subject to any grace periods agreed upon.
- (d) Additional Commitments. These may include the commitment to remove a mortgage lien, settle outstanding debts (gas, electricity, municipal taxes) and/or to register a caveat in the buyer's name.



### Caveat

By signing the sales contract, the seller accepts a contractual obligation to transfer the property and its title to the buyer. However, since the process typically takes several months, in order to put the world on notice that the property is subject to a pending sale, the buyer is typically required to file a Caveat on the property in favor of the buyer. A Caveat is a notice that appears on the property's registration information in the Land Registry stating that the holder of proprietary rights (in this case, the seller) has committed to perform, or abstain from performing, a certain transaction with respect to the property.

### Registration

The transaction is completed once the Property is registered in the buyer's name. In order to accomplish this, a number of documents must be submitted to the Land Registry, including a formal request to register the Property, a copy of the Sales Contract and confirmation from the Tax Authority that all the relevant taxes have been paid.

It is important to note for purposes of liability, estate planning, etc. that a major distinction between the registration of title in Israel versus, for instance, the U.S. is that jointly owned property (e.g. husband and wife) in Israel, generally does NOT grant a right of survivorship to a spouse who survives the passing of the first. Instead, each spouse owns a 50% interest in the jointly titled property and when a spouse passes away, that 50% interest becomes part of his/her estate and does not automatically vest in the surviving spouse.

### Declaration to the Land Tax Authority/Purchase Tax

The purchase of real estate in Israel is generally subject to the payment of Purchase Tax (the Purchase Tax is the obligation of the buyer – there are other tax obligations which fall upon the seller such as Capital Gains and Betterment Tax payments of which must be proven to your lawyer's satisfaction). Within 40 days of the signing the agreement to purchase the property, the buyer must submit a declaration to the Land Tax Authority, delineating the details of the transaction, consideration paid for the rights to the property, calculation of taxes owed and any relevant tax exemptions. Failure to report to the tax authorities a transaction in real estate constitutes a criminal offense.

### Additional Costs

A list of some of the costs which a purchaser of real estate in Israel will likely encounter include: (a) engineering reports, (b) brokers and legal fees both of which are typically charged in Israel as a percentage of the purchase price of the property (1 ½% - 2 ½% for brokers fees and 1% for legal fees), (c) purchase tax (which is a graduated tax and can reach as high as 7% - Olim may receive a full or partial exemption for the payment of purchase tax), (d) currency conversion costs, (e) mortgage costs (which may include registration costs of the mortgage), (f) notarial fees (in Israel the rates are set by law), (g) utilities deposits, (h) legal fees and other costs of the contractor who is selling a new apartment, (i) miscellaneous investigation of title and liens and registration of title costs and (j) Value Added Tax ("VAT"), currently at the rate of 18%, will apply to many of the above costs (e.g. fees charged by the engineer, broker and lawyer).



The above is intended as general information only and is not to serve as a legal opinion nor as legal advice and does not address many on the nuances and requirements of the applicable laws and regulations. Should issues arise regarding the contents of this memorandum, we suggest that you obtain legal consultation.

R.D.M

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