

LEGAL ASPECTS
OF
PURCHASING AN APARTMENT IN ISRAEL

By Meir A. Fuchs, Advocate

The system of registering rights in land and the process of consummating a real estate transaction in Israel are quite different from those in the U.S.

Many people are not aware of this but about 80% of the land in Israel is owned by the government, through a body known as the Israel Lands Administration ('Minhal'). Land which is owned by the ILA is not registered in the Land Registry ('Tabu'), but an internal record is kept at the ILA of the holders of rights as to the land (this will be discussed in a second article in this series).

About 20% of the land in Israel is privately owned and as such is registered in the Land Registry. Land which is registered in the Registry has usually, but not always, been sub-divided into lots and if one is dealing with an apartment building then has been divided into sub-lots.

One of the major differences between a land purchase in the US and in Israel is that there is no title company involved and thus an in depth due diligence inquiry must always be conducted as to the rights in the land and the potential tax assessments which may apply to the sale. This inquiry is conducted by the attorney for the purchaser who plays a major role in the successful, but cautious closure of a land deal in Israel.

The basic things which must be checked as to privately owned land are the exact names of the owners, their identification numbers, the portions by which they hold the land, the demarcation of the exact right of ownership in the land, the existence of any mortgages, pledges or liens, the existence of any expropriations or easements, etc.

The agreement for the sale/purchase of land is usually drafted by the attorney for the seller and the purchaser's attorney will then make his comments as to the agreement.

The first part of the agreement will set forth the declarations given by the seller according to which seller shall represent that he is the sole owner and sole beneficial holder of possession of the Land (a term which shall be clearly defined in the agreement); that the land is free and clear of any encumbrance or other rights of a third party; that he is free to sell the land, that the apartment is free of hidden defects, etc.

The second part of the agreement will deal with the sales price and the schedule of payment.

The most important part from the standpoint of a purchaser will be the next part which will deal with the escrow arrangements which shall be part of the deal. The agreement will need to fix that certain portions of the purchase price shall remain in escrow until for example the mortgage has been lifted from the property, and other portions will need to be placed in escrow in order to secure the payment of taxes which are applicable to the sale.

If a mortgage exists on the land then the seller shall be required to bring a letter of intent from his lending bank setting forth the sum which shall be required to be paid to the bank in order to release the mortgage. In such a case either an equal sum shall be placed in escrow until the mortgage is removed, or alternatively the first payment of the purchase sum is paid directly to seller's lending bank against a document releasing the mortgage.

The taxes which applicable to a sale of land in Israel are the following: Land Appreciation Tax ; Betterment Tax (in some cases); municipal and county taxes and levies – all of which are usually paid by the seller; and purchase tax-paid by the buyer. (A fuller discussion of the tax aspects of a real estate transaction shall be addressed in another article in this series).

The Land Registry shall not transfer land in its books to a new owner until it has been presented with confirmations showing that all applicable taxes have been paid.

In light of the above a significant sum (between 20-30% of the purchase price) will remain in escrow until the tax confirmations have been received. The escrow is held either by the seller's or the purchaser's attorney and sometimes by a joint escrow.

The next part of the agreement will address the date of transfer of possession, the fixtures or movables which shall remain in the apartment.

Another crucial document which is required to be furnished by the seller is an irrevocable power of attorney under the terms of which purchaser's attorney shall be empowered to sign any document and take any action required in order to transfer the property to the name of the purchaser. This power of attorney is irrevocable, by the terms of Israeli law, because the rights of a third party, the purchaser depends upon its validity. The power of attorney is released to the purchaser against payment of the full purchase price to the seller (the sums which are deposited in escrow are regarded as a payment made to the seller).

Another part of the agreement will deal with the liquidated damages which shall be payable by a party who breaches the agreement, which sum is usually fixed at about 10% of the purchase price. The purchaser will usually also demand a liquidated damage clause relating to a delay in the transfer of possession.

The major fees payable by a purchaser relating to an apartment purchase are usually as follows: real estate broker – 2% of the value of the transaction (sometimes negotiable); attorney – varies between 0.5-2% of the deal, depending greatly on the experience and goodwill of the attorney (when buying from a contractor, the

purchaser is required to pay also for the contractor's lawyer's fees); purchase tax-an average of about 4% of the value of the deal.

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Should you have any questions or comments regarding this article, feel free to contact Adv. Fuchs by email at meir@gkl.co.il.

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