

## THINKING OF BUYING PROPERTY IN AFRICA?

Francois Thevenau, Head of Valuations at RMB Private Bank recently visited several countries in southern Africa, with the view of establishing a Valuation Model for FNB Africa. He shares his acquired property ownership knowledge and comparisons with South Africa with you.

Before looking at specific country requirements, it's a good idea to familiarise yourself with the most common forms of property ownership found across the continent:

### Freehold ownership

This means full ownership of the property, be it land or land and the buildings on it. You have the the freedom to buy, sell, rent, or paint it pink, as long as municipal regulations are not contravened and taxes and services such as water, refuse removal and electricity are paid for.

**Clusters** are also sold as freehold title, although parts of the development like the roads are commonly owned.

**Sectional Title** is also a form of freehold ownership. In this case it is ownership of a unit, which is made of one or more sections, as well as co-ownership of the common or shared property. Some of that common area can also be purchased for exclusive use. A section is owned up to the middle or centre lines of the outside walls, the floor and the ceiling. The administration and maintenance of the common property is the responsibility of the body corporate, which is the collection of all the owners in the complex. The complex is managed by a board of trustees.

### Leasehold title

Leasehold title, unlike freehold title, is **not** full ownership. As with freehold title, a leaseholder has the right to use and enjoy a property for the period of the lease.

With the consent of the owner, the leaseholder may sub-let the property, renovate it or add to it. If the property is a plot of land, the leaseholder is entitled to – and is often obliged to – erect buildings on the property. The buildings become the property of the owner at the end of the lease.

Leasehold property is usually owned by the government, a local authority or an entity such as the South African Rail Commuter Corporation. Leasehold land is common in parts of Cape Town and along the Durban beachfront.

A leaseholder has more rights than a tenant, because the lease holding is for a relatively long period and is often registered on the owner's title deed at the Deeds Office. Leaseholders may raise finance using the lease as security. The financial institution may register a mortgage bond on the lease at the Deeds Office.

A lease holding may be granted for any period of time; it is usually for 99 years. At the end of the lease period, it may start again and run for another defined number of years.

The owner of leasehold land may sell the land during the period of the lease. The price usually excludes any buildings erected on the land by the leaseholder or any improvements the leaseholder has made to the existing buildings.

## PROPERTY OWNERSHIP IN OTHER COUNTRIES OF THE SUB-CONTINENT

### Zambia

Prior to 1 July 1975, land ownership was freehold. Since then, ownership has reverted to 99 Year *leasehold*, and the lease is renewable.

A land lease rental is payable to the Ministry of Land annually on September 1. It is a manual process i.e. payment cannot be made electronically or by cheque, but in person which often results in these rentals falling in arrears.

*Sectional Title* is in its infancy and is regulated by the Common Leasehold Scheme Act. Owners of such units are not fully aware of their responsibilities towards the maintenance of the common property.

Ownership is regulated by a Deeds Registry situated in Lusaka, with a branch in the Copper Belt. There are some historical anomalies at the Deeds Registry, where certain properties have multiple title holders due to poor data capture.

### Mozambique

The land belongs to the Government and not you. It cannot be mortgaged on its own but only once there are improvements / buildings on the land.

The Government grants a *Right of Use & Benefits* for 50 years, renewable at its prerogative for commercial properties and in perpetuity for residential properties.

Always check registration and ownership of rights to the existing improvements on the land for the remaining term and for the entity owning such

leasehold rights because it is not uncommon to find multiple 'leasehold' owners are for the same property.

Rural/agricultural land transactions require the permission of the government before these can take place.

Payment for leasehold land consists of a once-off upfront fee which is fixed by statute, depending on where and what zoning the property has. There is no ongoing ground-lease rental payable.

Rates and taxes are payable for the duration of the tenure. Sectional Title is in its infancy and is regulated by the same principles as above.

### Botswana

The types of land tenure are both *freehold* and *leasehold* – 50 years for commercial land and 99 years for residential land.

*Sectional title* ownership is recent and not fully in place.

There are some exceptions or anomalies, where 'Catholic church' land is sold on a 99 year leasehold basis, for both residential and commercial use.

Agricultural land requires ministerial consent for transfer and is reserved for citizens of Botswana.

### Swaziland

There is a mixed bag of ownership ranging from *freehold* in urban areas as well as some original farms and *leasehold* where the land belongs to the Swazi nation and is in Trust with the King as the main Trustee. This land can be leased from 10 up to 99 years and a bond can be registered against it. The *Sectional Title Act* exists but has not yet been promulgated, which means that you cannot purchase a sectional title unit yet.

There is one Deeds Registry in Mbabane which covers the whole country and which works on the same basis and principles as the Deeds Registry in South Africa.

## Lesotho

The land belongs to the Basotho Nation, with the King as custodian and the Land Ministry / Commissioner of Land as the regulator.

*Freehold* does not exist, nor does *Sectional title*. Only leasehold is applicable, 60 years for commercial land and 90 years for residential land. A formal lease or base title is entered into, with terms and conditions similar to any title deed in South Africa, and registered at the Deeds Registry. What happens after the 60 or 90 years has not yet been tested in court.

## PROPERTY OWNERSHIP IN SOUTH AFRICA

We have to acknowledge that until recently, many South Africans could, at best, own land on a 99 year leasehold basis, because of various restrictive Acts of Parliament that have now been repealed.

What this now means is that today in SA, any person who wants to and is legally able and can afford the going price, can freely own property or acquire property on a *freehold* basis.

Buying a freehold property in SA, you are given title to that property and the ownership is registered at the Deeds Office. This means that the ownership is made public for all to know and to respect. There is one registry office in each of the nine provinces, where ownership and other rights relating to immovable property are recorded. Any South African has access to the Deeds Registries and at RMB Private Bank it is even easier, as it can be done via our computers using the Aktex software.

I must say, property ownership is far simpler in South Africa.

