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CAN FOREIGNERS BUY PROPERTY IN KENYA?

13 Frequently Asked Legal Questions on Property Ownership, Immigration, Citizenship, Family Trusts and Taxation

EXECUTIVE SUMMARY

An Essential Legal Guide for Foreign Investors, Expatriates, Retirees, Digital Nomads and International Families.

Foreign nationals can legally purchase residential and commercial property in Kenya, but their ownership rights are subject to constitutional restrictions, land legislation and other applicable regulatory requirements. Under Article 65 of the Constitution of Kenya, 2010, non-citizens may generally hold land only on a leasehold basis for a term not exceeding 99 years. These restrictions also apply to foreign-owned companies and trusts with foreign beneficial interests.

Kenya remains an attractive destination for international property investors, expatriates, retirees, digital nomads and families seeking second homes, rental investments or long-term residence. Residential property markets in Nairobi, Mombasa, Diani, Watamu, Malindi, Naivasha and other locations offer opportunities for qualifying foreign purchasers. However, the legal requirements differ depending on the property's tenure, classification, location, ownership structure and intended use.

A particularly important distinction is that buying property in Kenya does not automatically confer a work permit, residence permit, permanent residence or Kenyan citizenship. Foreign nationals intending to live, work, retire or operate businesses in Kenya must independently satisfy the requirements of the applicable immigration category.

Property ownership should therefore be considered as part of a wider investment and relocation strategy that addresses immigration status, taxation, financing, succession planning and family wealth preservation.

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Key Legal Considerations at a Glance

Issue	General legal position
Foreign property ownership	Permitted for qualifying properties, subject to applicable restrictions
Maximum leasehold tenure	99 years under Article 65
Freehold ownership	Generally unavailable to non-citizens
Apartments and coastal property	Permitted where the title and transaction comply with applicable law
Permanent residence through property investment	Not automatically available
Retirement in Kenya	Class K permit may be available to qualifying applicants
Digital nomad residence	Class N permit may be available to qualifying applicants
Permanent residence through marriage	Potentially available after at least three years of qualifying marriage
Citizenship through marriage	Potentially available after at least seven years of qualifying marriage
Kenyan property investment companies	Permitted, subject to constitutional restrictions on foreign ownership
Family trusts	May hold qualifying assets, subject to landholding, trust and tax laws
Stamp duty	Generally 4% for urban property and 2% for rural property, subject to applicable rules
Capital gains tax	Generally 15% of the taxable net gain on a chargeable disposal

This CM Regulatory Alert, prepared by the Real Estate, Banking & Finance Department of CM Advocates LLP, in collaboration with the firm's Immigration & Global Mobility, WELL Practice and Tax Advisory teams, answers 13 frequently asked questions concerning foreign property ownership in Kenya.

It also outlines the principal legal safeguards foreign investors should consider before entering into property transactions.

1. CAN A FOREIGNER LEGALLY BUY A HOUSE IN KENYA?

Yes. Foreign nationals can legally purchase qualifying residential property in Kenya, subject to constitutional and statutory restrictions.

Article 65(1) of the Constitution provides that a person who is not a Kenyan citizen may hold land only on a leasehold basis for a term not exceeding 99 years.

Accordingly, foreign purchasers may acquire qualifying houses, apartments, villas, townhouses and other residential properties where the relevant title and transaction comply with Kenyan law.

However, the legal eligibility of the property must be established before a binding sale agreement is executed.

Foreign buyers should undertake comprehensive due diligence to verify the registered proprietor, authenticity of title, leasehold tenure, encumbrances, land rent, county rates, planning approvals and any pending litigation or restrictions affecting the property.

Where the property is being acquired from a developer, the purchaser should also investigate the developer's title, project financing, construction approvals, completion obligations and arrangements for transferring a registrable interest to the buyer.

A foreign purchaser should not rely exclusively on the seller's representations, marketing materials or assurances concerning ownership.

Key consideration: The right to acquire a particular property depends on its legal classification, tenure and applicable restrictions rather than its description as a residential or investment property.

2. CAN FOREIGNERS OWN FREEHOLD LAND IN KENYA?

Generally, no. Article 65 of the Constitution restricts non-citizens to leasehold interests not exceeding 99 years.

Article 65(2) further provides that where a non-citizen holds an interest in land exceeding 99 years, that interest is regarded as a 99-year leasehold interest for constitutional purposes.

Foreign nationals should therefore not assume that an existing freehold title or historical long-term lease can be acquired and retained on the same terms available to Kenyan citizens.

Article 65(3) also addresses ownership through companies and trusts. A body corporate is regarded as a Kenyan citizen for landholding purposes only where it is wholly owned by Kenyan citizens. A trust is similarly treated as citizen-held only where all beneficial interests are held by Kenyan citizens.

Consequently, incorporating a Kenyan company with foreign shareholders or establishing a trust does not circumvent the constitutional restrictions.

Agricultural land restrictions

Agricultural land may be subject to additional restrictions under the Land Control Act, Cap. 302.

Foreign purchasers considering farms, agricultural estates, rural residential properties or land with agricultural classifications should obtain specific legal advice concerning eligibility, required consents and the validity of the proposed transaction.

The existence of a residential house on agricultural land does not necessarily remove the applicable agricultural land restrictions.

3. CAN A FOREIGNER BUY AN APARTMENT IN NAIROBI OR MOMBASA?

Yes. Foreign nationals may purchase qualifying apartments in Nairobi, Mombasa and other Kenyan towns, subject to applicable property ownership restrictions.

Apartments are attractive to international buyers seeking residential accommodation, rental income or long-term investment opportunities.

However, the legal arrangements governing ownership of an individual apartment require careful examination.

The Sectional Properties Act, 2020, establishes a framework for sectional ownership of qualifying buildings.

Before purchasing an apartment, a foreign buyer should establish whether the unit is held under a registered sectional title, a registrable long-term lease or another legally recognised arrangement.

The purchaser should also investigate the developer's underlying title, sectional plans, common areas, service charge arrangements, management corporation and outstanding liabilities.

Where the development is financed by a bank, the buyer should establish whether lender consent, discharge or partial discharge is required before registration of the purchaser's interest.

Off-plan apartment purchases

Foreign purchasers buying off-plan apartments should pay particular attention to construction milestones, completion dates, payment schedules, defects liability, remedies for delay and arrangements for delivering title.

Where appropriate, payments should be supported by contractual safeguards, including stakeholder arrangements or other mechanisms suitable for the transaction.

Key consideration: The purchaser should confirm that the developer is legally capable of delivering the promised property interest and that the sale agreement adequately protects the purchaser if completion is delayed or fails.

4. CAN A FOREIGNER BUY BEACHFRONT PROPERTY IN DIANI, WATAMU OR MALINDI?

Yes. Foreign nationals may acquire qualifying coastal and beachfront property in Kenya, subject to constitutional, land, environmental and planning restrictions.

Kenya's coastal property market, including Diani, Watamu, Malindi, Kilifi and Mombasa, attracts foreign buyers seeking holiday homes, retirement residences, rental investments and hospitality-related developments.

However, beachfront property transactions may involve additional legal considerations.

These include the status of the title, leasehold tenure, public beach access, shoreline boundaries, environmental restrictions, planning approvals and applicable coastal development requirements.

A purchaser should establish whether the property is affected by public land reservations, access corridors, environmental protection measures, riparian restrictions or disputes concerning ownership and boundaries.

Where the property is intended for hospitality operations or short-term accommodation, additional licences and regulatory approvals may be required.

The fact that land is marketed as beachfront property does not necessarily establish that all the land shown in the marketing materials is available for private ownership or unrestricted development.

Foreign buyers should therefore undertake both legal and appropriate technical due diligence before acquiring coastal property.

5. DOES BUYING PROPERTY IN KENYA QUALIFY A FOREIGNER FOR PERMANENT RESIDENCE?

No. Purchasing property in Kenya does not automatically qualify a foreign national for permanent residence.

Property ownership and immigration status are governed by separate legal frameworks.

Section 37 of the Kenya Citizenship and Immigration Act, 2011, establishes the principal statutory categories for permanent residence.

These include certain former Kenyan citizens, qualifying long-term lawful residents, qualifying children of Kenyan citizens and qualifying spouses of Kenyan citizens.

Eligibility depends on the particular statutory category and the applicant's individual circumstances.

A foreign national does not become eligible for permanent residence merely because they have purchased a house, invested in a property development, incorporated a Kenyan company or paid taxes in Kenya.

Nevertheless, property ownership may form part of a broader relocation and settlement strategy where the applicant independently qualifies for an appropriate immigration status.

Foreign investors intending to establish Kenya as their long-term home should assess their immigration eligibility before making substantial property investments.

6. CAN A FOREIGNER RETIRE IN KENYA?

Yes. Kenya provides an immigration pathway for qualifying retirees and persons of independent means through the Class K permit.

The Class K permit is generally relevant to foreign nationals who are at least 35 years old and have assured annual income of not less than USD 24,000 from qualifying sources.

Applicants must satisfy the applicable immigration requirements and provide appropriate evidence concerning their income and financial circumstances.

This pathway may be suitable for foreign retirees wishing to establish a residence in Nairobi, Diani, Watamu, Malindi, Naivasha or other locations.

However, the Class K permit does not constitute unrestricted authorisation to undertake employment, business or professional activities in Kenya.

Foreign retirees should also assess their tax residence, healthcare arrangements, insurance, succession planning and the legal implications of holding property personally or through a suitable investment structure.

Where retirement income, pensions or other assets originate outside Kenya, cross-border tax and estate planning may also be necessary.

Key consideration: Retirement planning should integrate property ownership, immigration eligibility, taxation and succession arrangements rather than treating each issue separately.

7. CAN A DIGITAL NOMAD BUY PROPERTY AND LIVE IN KENYA?

Yes. A qualifying digital nomad may acquire legally permissible property in Kenya and apply for appropriate immigration authorisation, including the Class N permit where eligible.

Kenya's Class N framework provides an immigration pathway for qualifying foreign nationals undertaking eligible remote work.

This category may be relevant to overseas employees, consultants, technology professionals and digital entrepreneurs whose activities satisfy the applicable requirements.

The framework includes conditions concerning qualifying foreign-source income, remote work arrangements and supporting documentation.

The applicable regulatory provisions prescribe an assured annual income threshold of USD 55,000, alongside other eligibility requirements.

However, purchasing property does not replace the requirement to obtain appropriate immigration authorisation.

Digital nomads should also consider whether their physical presence in Kenya creates personal tax residence, reporting obligations or potential tax exposure for an overseas employer or business.

Where a foreign national intends to undertake local employment or establish a Kenyan business, a different immigration category may be required.

Accordingly, property acquisition, immigration eligibility and international tax planning should be considered together.

8. CAN A FOREIGNER OBTAIN KENYAN CITIZENSHIP BY BUYING PROPERTY?

No. Kenya does not automatically grant citizenship through property investment.

A foreign national does not become eligible for Kenyan citizenship merely by purchasing residential or commercial property, investing in a development project or incorporating a Kenyan company.

Citizenship is governed by the Constitution of Kenya and the Kenya Citizenship and Immigration Act.

The recognised pathways include citizenship by birth and registration under the circumstances prescribed by law.

Foreign nationals intending to establish long-term residence in Kenya should distinguish between temporary immigration permits, permanent residence and citizenship.

These statuses have different legal requirements and consequences.

A substantial property investment may demonstrate a person's commercial or personal connection to Kenya, but it does not independently establish eligibility for citizenship.

9. CAN A FOREIGN SPOUSE OF A KENYAN CITIZEN APPLY FOR PERMANENT RESIDENCE?

Yes. A qualifying foreign spouse of a Kenyan citizen may apply for permanent residence under section 37(1)(d) of the Kenya Citizenship and Immigration Act.

This provision recognises a permanent residence pathway for qualifying spouses who have been married to Kenyan citizens for at least three years.

The applicant must satisfy the applicable statutory requirements and provide appropriate evidence concerning the marriage and other relevant circumstances.

This immigration category is commonly referred to as Category D permanent residence.

It should not be confused with the Class D work permit, which concerns qualifying employment.

Where an international couple intends to purchase property in Kenya, the transaction should be considered alongside the foreign spouse's immigration status, matrimonial property arrangements, succession planning and tax obligations.

The fact that one spouse is a Kenyan citizen does not automatically eliminate the need to examine the legal character of the proposed property ownership arrangement.

10. CAN A FOREIGN SPOUSE BECOME A KENYAN CITIZEN?

Yes. Article 15(1) of the Constitution recognises citizenship by registration for qualifying persons who have been married to Kenyan citizens for at least seven years.

Section 11 of the Kenya Citizenship and Immigration Act establishes the corresponding statutory framework.

The seven-year marriage period is an important eligibility condition, but citizenship is not automatically conferred upon completion of that period.

The applicant must make the appropriate application and satisfy the prescribed legal requirements.

For foreign nationals married to Kenyan citizens, citizenship planning may have implications for long-term residence, family arrangements and future property ownership.

However, property transactions must comply with the law applicable at the time of acquisition.

Anticipated citizenship should not be relied upon to justify an otherwise unlawful land transaction.

11. CAN A FOREIGNER BUY PROPERTY THROUGH A KENYAN COMPANY?

Yes. A foreign national may acquire qualifying property through a Kenyan-incorporated company, provided that the company is legally eligible to hold the relevant property interest.

A company may provide a suitable investment vehicle where property is intended for rental operations, development, commercial investment or long-term family wealth management.

A properly structured company may facilitate centralised management, documented shareholder rights, investment governance and continuity of ownership.

However, Article 65(3) of the Constitution provides that a company is regarded as a Kenyan citizen for landholding purposes only where it is wholly owned by Kenyan citizens.

A company with foreign shareholders therefore remains subject to the constitutional restrictions applicable to non-citizen landholding.

Incorporating a Kenyan company does not automatically permit foreign investors to acquire freehold land.

Where a company is used, the purchaser should also consider beneficial ownership disclosure, corporate governance, director responsibilities, financing arrangements, taxation and the implications of future share transfers.

A company should be established for legitimate investment and governance objectives rather than as a mechanism for circumventing statutory restrictions.

12. CAN A FAMILY TRUST HOLD PROPERTY IN KENYA?

Yes. A family trust may hold qualifying property or shares in property-owning companies, subject to applicable landholding, trust, tax and beneficial ownership requirements.

Family trusts may provide an effective framework for succession planning, intergenerational wealth preservation and structured management of family investments.

For example, a family trust may hold shares in one or more family-owned investment companies, while those companies hold the underlying qualifying properties.

This arrangement may facilitate continuity of ownership and establish clear rules concerning investment management, beneficiaries, succession and the exercise of control.

However, a family trust does not automatically remove constitutional restrictions on foreign landholding.

Article 65(3) requires consideration of the citizenship of the persons holding the beneficial interests in the trust.

The legal structure should also address trustee powers, beneficiary rights, governance arrangements, taxation, reporting obligations and the consequences of transferring assets into or out of the trust.

Where an international family owns assets in multiple jurisdictions, cross-border succession and tax planning may be particularly important.

Kenyan legislation provides certain exemptions and reliefs for qualifying trust arrangements and transfers, subject to applicable statutory conditions. However, not every transfer into or out of a family trust automatically qualifies for exemption from stamp duty, capital gains tax or other taxes.

13. WHAT TAXES APPLY WHEN A FOREIGNER BUYS PROPERTY IN KENYA?

Foreign property buyers should consider the taxes and statutory charges arising on acquisition, during ownership and upon eventual disposal.

The applicable treatment depends on the property, purchaser, ownership structure and nature of the transaction.

Tax or charge	General legal position
Stamp duty	Generally 4% for qualifying urban property and 2% for qualifying rural property, subject to applicable statutory rules and exemptions
Capital gains tax	Generally 15% of the taxable net gain on a chargeable disposal, subject to applicable exemptions and reliefs
Rental income tax	Depends on the owner's tax residence, income classification and applicable tax regime
Corporation tax	May apply where property is held through a company
Value added tax	Depends on the nature of the property and transaction
Land rent	May apply to qualifying leasehold properties

County rates	May be payable under the relevant county framework
Trust and succession transfers	May qualify for specific statutory exemptions or reliefs where applicable conditions are satisfied

Stamp duty on property purchases

Stamp duty is generally payable in connection with the transfer of qualifying property interests.

The applicable rate depends on the property's classification and the relevant statutory provisions.

Purchasers should obtain an assessment of the applicable duty and other completion costs before entering into the transaction.

Capital gains tax on property disposals

Capital gains tax may arise when property is sold or otherwise disposed of in a chargeable transaction.

The tax is generally calculated by reference to the taxable net gain rather than the entire sale price.

Applicable exemptions, allowable costs and reliefs should be assessed before disposal.

Rental income taxation

Foreign nationals who acquire rental properties in Kenya should assess their Kenyan income tax obligations.

The applicable tax regime may depend on whether the owner is resident or non-resident, whether the property is residential or commercial and whether it is held personally or through a company.

Taxation of family trusts and property companies

Where property is held through a company or family trust, additional considerations may arise concerning company income, distributions, transfers, beneficial ownership and the availability of statutory reliefs.

Foreign investors should also consider applicable double-taxation agreements and reporting obligations in their country of residence or citizenship.

Key consideration: Tax planning should begin before the property is acquired, rather than being deferred until rental income is received or the property is sold.

HOW WE CAN ASSIST

CM Advocates LLP provides integrated legal advisory services to foreign nationals, international families, expatriates, retirees, digital nomads and investors seeking to acquire property or establish a long-term presence in Kenya.

Through our Real Estate, Banking & Finance Department, working alongside our Immigration & Global Mobility, WELL Practice and Tax Advisory teams, we assist clients throughout the property investment lifecycle.

Our services include property due diligence, conveyancing, leasehold transactions, sectional property acquisitions, off-plan purchase advisory, property investment structuring, company incorporation, immigration permits, permanent residence, citizenship applications, family trusts, succession planning, real estate taxation and property-related dispute resolution.

We also advise international clients on coordinating property investments with their wider commercial, immigration and family wealth objectives.

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Contact Us:

For legal assistance concerning foreign property ownership in Kenya, residential and commercial property acquisition, conveyancing, leasehold interests, off-plan developments, immigration permits, permanent residence, citizenship, family trusts, succession planning and real estate taxation, please contact:

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