FAQs on buying property in Shanghai, China

Description

[**NOTE**, *this is an old article written by Jason Tian back in 2009 based on his experience in helping foreigners in Shanghai purchase their homes here. Unfortunately, this article has been plagiarized by some other Chinese lawyers in Shanghai.Here this article is updated pursuant to new development after 2009. Please also take note that I am not encouraging purchase of Chinese properties at this time as I personally think Chinese real estate market has gone to the point that downward adjustment will be inevitable soon. In fact, it may not be a bad idea to cash in on your holding of Chinese properties*. *Please note that due to China's fast-changing legal environment, the information contained herein may become obsolete at the time of your read, so please seek your attorney's professional opinion if you have any question about the subject matter in the article.*]

1. Can I buy a house in China?

It is not that every foreigner coming into China is entitled to buy a house in China. From July 1, 2006, only those who work or study in China for more than one (1) year, are allowed to purchase houses in China. Please note, here we are referring to buying residential property. Foreign individuals are forbidden to buy commercial properties under his or her own name, unless he or she incorporates a company in China to do that.

Shanghai Landing Law Offices

However my recent experience has shown that local governments like Shanghai have not been very serious about implementing such restriction on foreigners purchasing local residential properties. For example, the key restrictive condition is that expats shall prove that they have been working or studying in Shanghai for more than a year. In strict sense, to prove the one year employment, foreigners shall submit not only employment contract but also work permit and residence permit, but local real estate transaction centre will only ask the buyers to submit an employment contract, an easily done job.

2. How many houses can I buy?

Foreigners are not allowed to purchase as many properties as they wish. Though there are no detailed rules and standards for measuring how big a house a foreigner can buy, as a general principle, a foreign individual qualified to buy property shall only buy residential property for self-residing purpose according to his own need. It is interpreted by local governments as that a foreign individual can only buy one (1) house though in practice, it is still possible to buy two (2) houses in certain circumstances.

Later on in 2010, China tightened the restriction on purchase of property by foreigners in China by providing clearly that a foreigner can only one residential property throughout whole China. In practice, for the reason that property ownership information in one city is not shared with other cities, it is in fact difficult for Chinese authorities to enforce this one-property rule.

However, there are always rules to bypass these restrictions in practice and we are happy to sharewith you such tips.

3. Do I need to have a Chinese name?

Yes. Foreigners buying property in China are required to have a Chinese name which will appear on your Real Estate Ownership Certificate together with your original name.

However, when you manage to buy a second home in Shanghai, you may have a different Chinese name. Who cares about your Chinese name?

4. Do I have to execute documents and go through related procedures on my own?

Generally speaking, yes.

Alternatively, you can authorize an agent to do all such signing and runaround work on your behalf. In that case, to the extent that your property is located in Shanghai, you need to prepare a power of attorney for your agent, which shall be notarized at a notary institution in China. If you are not in China yet, your power of attorney shall be notarized first in your locality and then present the notarized POA to the Chinese embassy or consulate in your country for attestation.

5. Can I apply for mortgage loan when purchasing a house? And how much?

Yes. Foreigners are eligible to take out loans in either foreign exchange currencies or in RMB (Chinese official currency). Given the expectation of RMB appreciation in the future, you may be more interested in take foreign exchange loans.

Shanghai Landing Law Offices

You cannot pay all purchase price by virtue of bank loans. Banks in China are restricted to extend mortgage loan to the extent that the amount of the loan shall account for at most 80% of the total purchase price. In other words, you have to pay at least 20% of the total price out of your own pocket, the down payment as termed in practice.

Further, if you buy a property of more than 90 square meters, your down payment shall account for at least 30% the percentage of the property price, which means your bank loan will account for only 70% thereof. However, rules in China often are bent to some extent, and for premium customers, banks are willing to extend bigger loan than regulated.

You need to confirm with your bank whether there will be any cumbersome formalities and how long it takes to grant your loan.

6. Do I have to engage a real estate broker to help me?

You don’t have to. But a real estate broker can facilitate your transaction in terms of locating appropriate target houses, coordination with seller, preparation of transaction documents and going through government filing procedures. In return, you need to pay about 1% of the transaction value to the broker as commission.

Alternatively, you can also retain our service. As real estate lawyer, we are allied with many real estate

brokerage firms in different localities in Shanghai, which will be employed by us to help our clients in searching, and locating target properties. We can also help to arrange your financing and go through all formalities with government agencies and third-party service providers such as guarantee institutions. Meanwhile, except for that, we will safeguard your interest by taking care of legal issues involved in your transaction. At last, you will pay us only in the similar amount of the broker's commission (1.0-1.5% of the transaction value) and don't need to pay any cent to the broker any more.

7. What are the general procedures or steps for buying a property in Shanghai?

Generally, the following procedures will follow, provided that the transaction takes place in Shanghai:

(1) You get your real estate agent to find prospective properties for your inspection.

(2) Upon finding your suitable target property, you will be required to sign an intermediary agreement with the agent in which your proposed terms and conditions for purchasing the target property will be recorded and which will be presented to the seller.

At the same time you sign this preliminary agreement, you will also be required to pay a sum of earnest money to show your sincerity about the deal. This step often leads to dispute later when the deal falls through. Attention shall be paid thereto when legal document regarding this earnest money or deposit is signed.

Shanghai Landing Law Offices

(3) If the seller agrees with your proposed terms and conditions, he will sign the agreement, and thereupon that agreement becomes binding upon you. Generally, in accordance with a usual clause, that earnest money will transform into a deposit.

(4) Then in accordance with that preliminary agreement, you and the seller will be executing the official sale and purchase contract for the target property ("**S&P Contract**"). Thereupon, you may need to pay the down payment to the seller.

In practice, property sale and purchase contract with a foreigner as one party, either seller or buyer, thereto shall be notarized with a notary public office. Otherwise, real estate authority won't accept the deal. The notarization fee is often assumed by the foreign party or shared by the foreign parties.

(5) In case that you need bank loan to financing your purchase, with your notarized S&P Contract, you will execute documents for obtaining your loans and go through other formalities therefor.

(6) Upon bank's approval of your loan application, you and the seller will go to the governmental real estate registration agency to effect title transfer and mortgage registration.

(7) When the governmental registration agency approves the title transfer and issue the title certificate to you and the mortgage certificate to the bank, the bank will wire your loan (converted into RMB first) into the seller's designated bank account. Thereupon, the deal is completed.

These steps are not statutory requirement and are the relatively simple process of making a property deal. In the event that the seller still has mortgage loan over the property to be sold, the procedures will be more complex. Moreover, if you want to make sure of your money safety during the deal, there will be third-party money-supervising/escrow account mechanism involved, which will make the deal process more complicated.

8. What if I don't have any RMB? Can I pay for the deal in foreign exchange in China? What I should I take heed to?

To buy property in China, you have to use RMB for the settlement of your deal. You cannot pay foreign exchange to the seller even though the seller is a foreign party. Generally, you need to open a foreign exchange bank account with an eligible bank (those designated by the central bank to deal with foreign exchange businesses) and wire your foreign exchange from abroad into that account and then apply for conversion of the same into RMB which will be directly paid by your converting bank to the seller's bank account.

Bear in mind that as an individual, your annual foreign exchange conversion quota is USD 50,000 or the equivalent. If you don't have sufficient RMB money for earnest money and/or down payment, you will have to take time to effect foreign exchange remittance and conversion, which may consume time. So make sure that in the relevant agreement and contract, you are afforded with sufficient time to do that so as to avoid breach of those legal documents.

In practice, it is very often that buyers can pay a portion of property price to seller's offshore account esp when the seller is also a foreigner.

Shanghai Landing Law Offices

9. What documents should I prepare when I effect foreign exchange conversion into RMB with my bank?

(1) the notarized sale or pre-sale contract for buying the property;

(2) valid identity certification. Generally, your passport;

(3) certification of valid employment or study program with a term of more than one (1) year; and

(4) certification by governmental real estate department proving that the aforesaid sale or pre-sale contract has been filed with corresponding authorities. Such certification is available upon application to Shanghai real estate registration centre at the district level.

(5) As an instrumentality for foreign exchange control, you must also obtain from the local office of SAFE (State Administration of Foreign Exchange) a paper bearing your deal information (equivalently, a government permit), without such a paper, banks will not concert your foreign exchange into RMB.

10. What if the seller still has mortgage loan denominated in foreign exchange (for instance, USD) over the target property? Can the seller pay off its mortgage loan with the buyer's down payment?

In such a case, the seller will have to discharge the existing loan and mortgage with his or her own money. Buyer's down payment shall be converted into RMB before being remitted into seller's bank

account and under China's current foreign exchange control systems, such RMB amount is not allowed to be used to purchase foreign exchange (in this case, USD) to pay off the seller's existing mortgage loan.

It shall be noted that parties to property deals often neglect such issue when concluding the sale and purchase contracts which adopt payment structure as outlined in the preceding paragraph. Such neglect will often give rise to deal failure and probably dispute between the parties.

Just happened to read an interesting article titled "A Buying Guide to Shanghai Real Estate for foreigners" on a real estate website focusing Shanghai properties. Give it a read to know more.

Date Created
April 2013
Author
admin

Shanghai Landing Law Offices