

Zhong Yin Lawyers, Shanghai Office, Suite H, 21/F, World Plaza, No.855, South Pudong Road, Shanghai, 200120, China
Jason Tian, attorney-at-law, www.doroto.com, E-mail: tianjie@zhongyinlawyer.com, Mobile Phone:(86) 138 1654 8421

Purchase Real Property in China

Jason Tian

With Chinese economy still looking rosy in a foreseeable run, quite a number of foreigners see their futures in China and they are keen to have their China homes. We would like to briefly introduce how to purchase residential properties in China.

1. Am I Entitled to purchase

Not every foreigner can purchase a house in China. According to relevant rules, only those who are entitled to work or learn/study in China for more than one (1) year are allowed to buy self-using houses based on their actual needs. In practice, it is interpreted that such foreigners can only buy one (1) house/apartment.

However, such rules are not strictly implemented except in first-tiered cities like Shanghai, Beijing, and in other cities such as Chongqing, Hangzhou and Ningbo, foreigners are allowed to buy more than one (1) house so long as they are able to obtain the OK from the local national security bureau (only a procedural matter).

2. General procedures for purchasing a house

Generally, the following steps will follow:

(1) The buyer will enter into a preliminary agreement (the "Agreement") with the seller and probably the realtor after a satisfactory inspection of a target property,, setting forth the main clauses to be included in the later formal sale and purchase contract for the house ("Contract"). Parties may directly enter into the Contract in some cases.

(2) Upon execution of the Agreement, buyers are often required to pay a sum of earnest money to show sincerity for the deal. Here, watch out. Do not pay such earnest money before you and seller have agreed on all major terms relating to the deal. Otherwise, under Chinese law, if you withdraw from the deal, you will forfeit that money. Equally, if the seller breaches, he shall return two times the earnest money to the buyer.

(3) After that, the parties shall conclude the Contract, upon which the buyer shall pay the down payment. If the buyer needs bank financing, he shall then sign loan and mortgage documents

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Foreigners in China may wish to buy a house for many reasons, *inter alia*, to ride the tide of Chinese property market boom. However, it may turn out to be a nightmare for a foreigner to make an unintelligent purchase of real property in China. We would like to briefly introduce how to purchase residential properties in China. If you are interested in the content below, please feel free to contract us for consultation.

bank and obtain the bank's consent to extend loan.

(4) Afterwards, the parties shall, as arranged in the Contract, together apply to effect title transfer with the local real estate department at the agreed date on which the parties may pay their respective taxes and fees.

(5) Following acceptance by the real estate authorities of title transfer application, buyer shall pay, or procure his bank to pay, the remainder of the house price to seller.

(6) Finally, the parties shall conduct handover of the property from seller to buyer.

Please note, if there is still a mortgage over seller's property and the seller has no money to discharge the mortgage even with down payment paid by the buyer, which means the seller will need buyer's mortgage loan to prepay its existing loan, another third party, a guarantor, will be involved to guarantee the safety of the buyer's loan during the period from release of the loan to the date the property in question is duly mortgaged to the buyer's bank. A set of new documents need to be signed by relevant parties.

3. Dealing well with your realtor

Property transactions almost always involve a realtor. Bear in mind, the realtor is not your agent. Foreigners are more vulnerable to fall victim to tricks and frauds framed by realtors. When dealing with realtors, you shall stick to two (2) principles: firstly, never trust their oral promises, ask them to write their promises and undertakings in the Agreement or separate papers; secondly, do not pay their commission upfront until the handover of the property.

4. Financing your purchase

Foreigners are allowed to take out mortgage loans from banks denominated in RMB or foreign exchanges. However, buyers are mandatorily required to pay a minimum percentage of the Contract price, i.e. the down payment, out of their own pockets, 20% thereof for houses of less than 90 sqm, 30% for houses of more than 90 sqm, 40% for the second house of the family. In other words, only the remainder of money can be borrowed from banks.

Our experience indicated that in practice, some of the foreign-funded banks may be willing to extend more loans than the limits prescribed in rules, provided that the borrower has a strong financial credit.

5. Well drafting the Contract

Last but not the least, you need to smartly draft the Contract, the most important document in the deal. Most standard contracts available from real restate authorities are too sketchy. The following issues shall be adequately addressed therein:



- (1) Whether the seller alone has the right to sell the property; whether the house is co-owned or community property in a marriage;
- (2) Whether any third party having the right of first refusal has waived that right;
- (3) Whether the property is subject to any mortgage, or subject of any legal proceedings, or is likely to be so subject thereto or thereof;
- (4) Whether the property has any material defects or quality problems;
- (5) Default liabilities. Without such clauses, the Contract will be a tiger without teeth.

The above list is not exhaustive. Risks shall be analyzed on a case by case basis. The foregoing contents are about purchase of resale residential properties. If you buy new houses/apartments from developers, your risk exposure will be very different from those discussed above. Also, in the case of transactions in respect of commercial/retail properties, special heeds shall be given thereto in addition to the above. We are happy to provide legal services in those areas upon your request.

Please find our contact information on the next page.

田杰 律师**Jason Tian**

Attorney-at-law

电话(Tel):

(86) 13816548421

(86-21) 50383762

传真(Fax):

(86-21) 68869532

(86-21) 50383762

电子邮件(E-Mail):

[tianjie@zhongyinlawyer](mailto:tianjie@zhongyinlawyer.com)[.com](mailto:tianjie@zhongyinlawyer.com);doroto@163.com*We're on the Web!*

我们的网址:

www.zhongyinlawyer.com

OR

www.doroto.com**田律师简介**

江苏省徐州市人，毕业于华东政法大学研究生院，获硕士学位。曾先后在英国高伟绅律师行上海代表处任高级法律翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于中银律师事务所上海分所。

服务范围:

- (1) **房地产投资和收购:** 房屋和土地之买卖和租赁、房地产投资（大型商业、居住物业之项目收购，尽职调查、交易结构设计等）、商业地产经营、物业管理、劳动等；
- (2) **外商投资领域:** 外商投资企业（包括外商投资合伙企业）设立、增资和变更、公司治理结构、股权转让和并购，以及技术、商标许可/转让；外汇管理、外债等资本项目等；
- (3) **法律顾问:** 担任企业常年法律顾问，合同起草和审查、公司治理结构、股权转让、重组改组、对外投资等规范和制度建设，对企业经营进行事先法律风险防范，促进企业依法经营等。

About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP and as an attorney-at-law at Zhonglun Law Firm. His **legal services** cover FDI, M&A, OEM, real estate (investment, sale, acquisition, purchase, leasing and property management of both residential, retail, commercial and industrial properties), corporate laws and trademark/technology licensing and transfer, and other general legal businesses such as employment, contract, tort etc.

如果您对上述内容有任何疑问，请致电、致信给我们！

If you have any questions about the above written contents, please do not hesitate to contact us!

中银律师事务所上海分所
上海市浦东南路 855 号世界
广场 21 层 H 座，邮编：
200120



ZHONG YIN LAWYERS
Suite H, 21/F, World
Plaza, No.855, South
Pudong Road, Shanghai,
200120, China