

Questions related to Power of Attorney

- **IS A POWER OF ATTORNEY (POA) REVOCABLE?**

Yes, a POA can be either revocable or irrevocable, depending on what sort of a POA one has made.

- **CAN A POWER OF ATTORNEY BE ISSUED TO SOMEONE ELSE TO REGISTER THE DOCUMENT?**

Yes, the same is required to be registered in the office of the Sub Registrar in the city you are staying in.

- **CAN A POWER OF ATTORNEY BE ISSUED TO SOMEONE ELSE TO REGISTER THE DOCUMENT IN CASE OF BEING OUT OF COUNTRY?**

Yes, the Power of Attorney Draft can be signed and attested by the Indian Consulate/ Indian Embassy/or local notary. Once the Power of Attorney is received in India, the same has to be submitted to the Collector of Stamps for adjudication. After the same is adjudicated the POA holder can submit the same at the time of registration of the document.

- **TYPES OF POWER OF ATTORNEYS?**

1. Special Power of Attorney

2. General Power of Attorney. Both can be revocable or irrevocable and should confer the authority as desired by the person issuing the POA.

- **WHAT IS THE DIFFERENCE BETWEEN A GENERAL AND SPECIAL POWER OF ATTORNEY**

A general power of attorney gives broad authorizations to the agent. The agent may be able to make medical decisions, legal choices, or financial or business decisions.

A special power of attorney narrows what choices the agent can make. You can even make several different POAs, with different agents for each.

For example, you could create a special power of attorney which only allows your spouse to make medical decisions on your behalf. You could create another POA which would grant a business partner the ability to use certain assets to care for your business in the event you become incapacitated.

In other words, special powers of attorney allow you to be more specific.

Questions related to Leave and License Agreement

- **IS REGISTRATION OF A LEAVE AND LICENSE MANDATORY AND WHAT ARE THE CONSEQUENCES IF THE SAME IS NOT REGISTERED?**

As per Section 55 of the Maharashtra Rent Control Act, 1999 registration of Leave and License Agreement is compulsory and it is the responsibility of the landlord to ensure registration. If the same is not registered, the landlord would be prosecuted and on conviction he's subject to up to three months imprisonment or be subject to fine not exceeding Rs.5000/- or with both. Further in the absence of a Registered Agreement, the contention of the tenant, about the terms and conditions on which the premises have been given to him by the landlord shall prevail unless otherwise proved.

- **IS THE LEAVE AND LICENSE AGREEMENT GENERALLY SIGNED IN MULTIPLES OF 11 MONTHS OR 12 MONTHS? IS THERE ANY STIPULATION OF TIME?**

Formerly leave and license agreements used to be signed in multiples of 11 months or 12 months. After The Maharashtra Rent Control Act, 1999 came into force from 1.3.2000 there is no stipulation as to whether leave and license agreement should be in multiples of 11 or 12 months, and there is no stipulation as to total time period. However, Leave and license agreement generally does not exceed 3-5 years. If it does, it's then called a lease deed.

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- **WHAT IS THE DIFFERENCE BETWEEN LEASE AND LEAVE AND LICENSE AGREEMENT?**

Lease is defined under Section 105 of The Transfer of Property Act, 1882 and a lease of immovable property is a transfer of a right to enjoy such property for a certain time or in perpetuity on consideration to be rendered periodically or on specified occasions, while a license is defined in Section 52 of the Indian Easement Act, 1882, and it does not create any interest in the premises in favour of the licensee excepting a mere right to use and occupy the premises for a limited duration. Both documents have now to be registered. A lease deed is required to be stamped and registered. However the stamp duty payable on lease is more than on Leave and License for a period up to three years. For a period exceeding three years the stamp duty is same for both agreements. The implications of entering into a lease agreement would be:

- i) That stamp duty would have to be paid
- ii) That the document would have to be registered
- iii) That Municipal taxes may go up
- iv) Of course, Income-tax would have to be paid on your income; and
- v) The question of Wealth-tax would have to be considered. One property is exempt from Wealth-tax. However, if you have any other property, this implication would have to be considered.

General FAQs on After Purchase

- **WHAT IS A SALE DEED?**

Sale Deed, also known as conveyance deed, is a document by which the seller transfers his right to the purchaser, who, in turn, acquires an absolute ownership of the property. This document is executed subsequent to the execution of the sale agreement and after compliance of various terms and conditions detailed in the sale agreement.

- **CAN POSSESSION BE HANDED OVER TO DO A POOJA ?**

While the possession cannot be handed over until completion of the formalities, temporary arrangement could be made to have the apartment kept open for a few hours for the purposes of performing the pooja.

- **FROM WHAT DATE IS THE MAINTENANCE AMOUNT DUE?**

The Maintenance amounts are due from the date the apartment is ready for possession/handover whichever is earlier.

- **FROM WHAT DATE IS THE PROPERTY TAX DUE?**

Property taxes are due from the date the unit is occupied or the date of completion certificate whichever is earlier.

- **WHEN THERE ARE APARTMENTS OF DIFFERENT SIZES IN A COMPLEX, HOW IS THE MAINTENANCE CHARGE CALCULATED?**

Usually, the actual area owned by the individual is the basis for calculation of maintenance charge.

- **WHAT IS THE PURPOSE OF COLLECTING AMOUNTS TOWARDS SINKING FUND IN CO-OPERATIVE HOUSING SOCIETY? WHAT SHOULD BE THE CONTRIBUTION FROM MEMBERS TOWARDS SINKING FUND? WHEN CAN THE AMOUNT COLLECTED FOR SINKING FUND BE SPENT BY THE SOCIETY?**

The purpose of collecting Sinking Fund is to accumulate and keep sufficient funds with the society so that the property of the Society i.e. building can be reconstructed in future. The contribution to Sinking Fund is a statutory obligation. Sinking Fund has to be contributed as decided by the General Body of the Society. It should be at least @1/4 per cent per annum on the cost of the each flat excluding the cost of the Land. On the resolution passed at the meeting of the General Body of the Society and with the prior permission of the Registering Authority, the Sinking Fund may be used by the Society for reconstruction of its building/s or for carrying out such structural additions or alterations to the building/s as in the opinion of the Society's Architect is required for carrying out such heavy repairs as may be certified by the Architect. However, permission is not usually granted by the Registrar to withdraw amounts from the sinking fund.

- **WHAT ARE NON-OCCUPANCY CHARGES?**

Non occupancy charges are levied by the society/condominium/apartment when the flat owner himself does not reside in the flat but rents it out to a third party.

- **WHAT CONSTITUTES COMPLETION OF THE SALE?**

The transfer of a flat is concluded when you have a sale deed/ agreement for sale coupled with actual possession. Generally, in all cases the entire amount is paid simultaneously with the handing over of physical possession and signing of the transfer documents.

Questions related to NRIs

- **CAN NRIS AND OVERSEAS CORPORATE BODIES (OCB) INVEST IN INDIA?**

NRIs and OCBs can make investments in India in consonance with Indian law, RBI rules and regulations as well as other regulations set forth by the Foreign Investment Promotion Board (FIPB).

NRIs and OCBs can make up to 100% equity investment in real estate sector and the nation's civil aviation sector. Further, all investments, except for the real estate investments, are fully repatriable. For real estate investments, the lock-in period on original investment is 3 years.

- **CAN NRIS OBTAIN LOANS FOR BUYING A HOUSE/FLAT FOR RESIDENTIAL PURPOSE FROM FINANCIAL INSTITUTIONS PROVIDING HOUSING FINANCE?**

Reserve Bank has granted general permission to certain financial institutions deals in housing finance to grant housing loans to non-resident Indians for acquisition of houses/flats for self-occupation subject to certain conditions.

- **WHAT ARE THE FORMALITIES REQUIRED TO BE COMPLETED BY FOREIGN CITIZEN OF INDIAN ORIGIN FOR PURCHASING RESIDENTIAL IMMOVABLE PROPERTY IN INDIA UNDER THE GENERAL PERMISSION?**

They are required to file a declaration in form IPI 7 with the Central Office of Reserve Bank at Mumbai within a period of 90 days from the date of purchase of immovable property or final payment of purchase consideration along with a certified copy of the document evidencing the transactions and bank certificate regarding the consideration paid.

- **CAN SUCH PROPERTY BE SOLD WITHOUT THE PERMISSION OF RESERVE BANK?**

Yes, Reserve Bank has granted general permission for sale of such property. However whether the property is purchased by another foreign citizen of Indian Origin, funds towards the purchase consideration should either be remitted to India or paid out of balance in NRE/FCNR accounts.

- **CAN FOREIGN CITIZEN OF INDIAN ORIGIN ACQUIRE OR DISPOSE OF RESIDENTIAL PROPERTY BY WAY OF GIFT?**

Yes. Reserve Bank has granted general permission to foreign citizen of Indian Origin to acquire or dispose of properties up to two houses by way of gift from or to a relative who may be an Indian Citizen or a person of Indian origin whether resident in India or not, subject to compliance with applicable tax laws.

- **CAN FOREIGN CITIZEN OF INDIAN ORIGIN ACQUIRE COMMERCIAL PROPERTIES IN INDIA?**

Yes. Under the general permission granted by Reserve Bank properties other than agricultural land/farm house/plantation property can be acquired by foreign citizen of Indian Origin provided the purchase consideration is met either out of inward remittance in foreign exchange through normal banking channels or out of funds from the purchaser's NRE/FCNR accounts maintained with banks in India and a declaration is submitted to the Central Office of Reserve Bank in Form IPI 7 within a period of 90 days from the date of purchase of the property/final payment of purchase consideration.

- **WHILE PURCHASING REAL ESTATE MOST DEVELOPERS DEMAND A POWER OF ATTORNEY IN THEIR FAVOR, IS THERE A WAY TO AVOID IT?**

One can choose not to grant the Power of Attorney (POA) to the developers. However, this will mandate the mailing of all documents to your foreign residence and associated time delays.

- **WHAT ARE THE CRITERIA REGARDING AVAIL OF HOME LOANS FOR NRIS IN INDIA?**

According to Reserve Bank guidelines for NRIs, the loan amount shall not exceed 80% of the cost of the dwelling unit, also depending upon the bank norms. Own contribution, which is the cost of dwelling unit financed less the loan amount, can be met from direct remittances from abroad only through normal banking channels, your Non-Resident (External) [NR (E)] Account and /or Non-Resident (Ordinary) [NR (O)] account and /or Non-Resident Special Rupee account [NRSR] in India.

Repayment of the loan, comprising the principal and interest including all the charges are to be remitted from abroad only through normal banking channels, your Non-Resident (External) [NR (E)] Account and /or Non-Resident (Ordinary) [NR (O)] account and /or Non-Resident Special Rupee account [NRSR] in India.

- **HOW MUCH LOAN CAN ONE GET?**

You can get a Home Loan of up to 80% of the Total Consideration Value or eligible income drawn, whichever is lower.

- **CAN AN NRI GIVE A POWER OF ATTORNEY TO A PERSON IN INDIA FOR COMPLETION OF LOAN FORMALITIES ON THEIR BEHALF?**

Yes. We very well understand that as an NRI you have a different set of needs with respect to your real estate management and investment requirements and we also understand that it needs special set of services to cater to your requirements. The good news from India is that government has allowed 100% repatriation for NRIs.

Reserve Bank has granted general permission to certain financial institutions providing housing finance e.g. HDFC, LIC Housing Finance Ltd. etc. to grant housing loans to non-resident Indian nationals for acquisition of houses/flats for self-occupation subject to certain conditions.

- **WHAT IS ADJUDICATION?**

In case you wish to ascertain the correct stamp duty payable on an instrument, an application can be made for to the Collector of Stamps.

Questions related to Taxation

- **WHAT ARE THE TAXATION FORMALITIES I NEED TO COMPLETE WHILE PURCHASING A PROPERTY?**

From the point-of-view of taxation, no special formalities are required for completing while buying the property. However, proper Agreement to Sale, etc. must be done and the ownership and the title should be verified to ensure that one does not have a problem at a later stage in respect of such property.

- **WHAT ARE THE TAXATION FORMALITIES I NEED TO COMPLETE WHILE SELLING A PROPERTY?**

a) Sale of residential accommodation may result in a short term capital gain/loss if sold within a period of 3 years or a long term capital gain/loss if sold after a period of 3 years from the date of acquisition (Section 29A, 42A and 47).

b) A short term capital gain/loss will be treated and taxed in the same manner as any other income/ loss.

c) Tax on long term capital gain can be avoided if the sale relates to a property other than one residential accommodation and reinvested in any residential property within a period of 1 year before or 2 years after the date of transfer (Section 54 F).

d) Long term capital gain can also be saved if only the capital gains (and not the total sale proceeds) is invested for a period of 3 years in specific Bonds of National Highways Authority of India or Rural Electrification Corporation Limited (Section 54 EC).

e) Determination of sale proceeds of a Property will be on the valuation adopted by the State Stamp Duty and Registration Authorities and not the amount mentioned in the Deed of Conveyance (Section 50C). This is intended to cover cases where part of the sale price is received by the seller in unaccounted cash.

f) In the absence of either freezing the capital gain in specified securities or reinvested as per clauses (d) and © as above Income Tax is payable @ 20% by the seller on the capital gains computed by deducting from the Sale proceeds the cost of acquisition as increased by cost of living index (Section 112 and Section 55).

- **HOW CAN I CALCULATE THE INCOME FROM HOUSE PROPERTY?**

The systems of calculating income from house property broadly speaking would be as under:
Actual rent received from property

Less: House Tax to the extent actually paid by the assessee

Balance: i.e. Annual Value

Less: 1) 30% of the annual values

2) Actual Interest in respect of loan for the property

Net taxable income from house property

The above-mentioned formula would enable most of our readers to claim correct deduction in respect of income from house property.

- **IS IT ADVISABLE TO CHOOSE A FIXED OR A FLOATING RATE WHEN SELECTING A HOME LOAN?**

Choosing the floating rate of interest or not depends upon the perception of the client. Personally I would feel that fixed rate is good so that I am aware of my liability for interest in years to come and when the interest rates are lower on housing then also it is better to think of a fixed rate. However, as the situation stands as on today I feel that the interest on loan taken should be floating rate of interest because correction is expected in the interest in the coming period.

- **MY WIFE & I HAVE JOINTLY TAKEN HOUSING LOAN FOR A SINGLE HOUSING UNIT. CAN WE BOTH AVAIL TAX BENEFITS IN OUR INDIVIDUAL TAX RETURNS & HOW MUCH?**

Relax, be happy and get the benefit of enjoyment of tax deduction for both of you. Please do remember that the benefit in respect of interest on loan as also on repayment of the housing loan, etc. is allowed to each co-owner of the property. Hence, you as well as your wife will be able to claim the benefit of tax deduction in respect of interest (max. 1,50,000 per person) on loan as well as on repayment of loan.

- **CAN I AVAIL TAX BENEFITS FOR BUYING LAND? I WANT TO INVEST IN LAND RATHER THAN FLATS AND I WILL AVAIL BANK LOAN FOR THE SAME. CAN I AVAIL A TAX BENEFITS FOR THIS LOAN?**

If you want to invest only in land then no income-tax benefit will be available to you. However, you buy the land and thereafter, you construct your house on the same then the total value of your residential property will comprise of cost of land as well as the cost of construction. In this event, you will be able to enjoy the tax benefits on the full amount of the property inclusive of the cost of the land. Please contact your nearest bank for obtaining details about the loan on the land. Generally speaking, a bank will give you loan for construction of the property on the land owned by you. There are options even available where you can obtain loan even on the land.

- **HOW DO I CALCULATE THE CAPITAL TAX GAIN?**

For the purpose of Real Estate, the Long-term Capital gain would be only if you hold the property for more than three years, then it is subjected to tax @20% only. In case you sell the property in less than three years time then it would become short-term Capital Gain and the same is required to be taxed at the prevailing tax schedule of the rate applicable to the assessee depending on his other incomes.

- **IS THERE ANY WAY I CAN BE EXEMPTED FROM PAYING CAPITAL GAIN TAX?**

Innumerable ways and options are available for saving capital gains. For example, in the first place invest in a residential house property or a flat to make investment so as to see that capital gains are exempted. Likewise, if a person were to make the investment in REC or NHAI bonds then also he enjoys complete exemption from the long-term capital gain payable by him in respect of capital gains due.

- **CAN I INCLUDE FOLLOWING IN COST OF A PROPERTY:-**

A) INTEREST PAID DURING CONSTRUCTION PERIOD

B) LOAN PROCESSING FEE

C) BROKERAGE PAID

D) STAMP DUTY PAID

E) MISC. OTHER DIRECT/INDIRECT EXPENSES RELATED TO PURCHASE OF PROPERTY I.E. TRAVEL, CONVEYANCE, HOTEL STAY, TELEPHONE CALLS ETC.

Interest paid during the construction period would enjoy tax benefit in total five years as per s.24 of the I.T. Act, 1961. The Loan processing fee, the brokerage, the stamp duty can be added to the

cost of the property. The misc. expenses if they can be attributed directly to the purchase of the property then they would form part of the cost of the property.

- **ACCORDING TO INCOME TAX LAWS, WHEN IS A PERSON CONSIDERED TO OWN A HOUSE - AT THE TIME OF ALLOTMENT OR AT THE TIME OF POSSESSION?**

The ownership for Income-Tax purpose would be when you receive the possession. Even if payment is not made but possession is received, it will be treated as a sale transaction.