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SWISS SITUS PROPERTIES OWNED BY FOREIGN CITIZENS

Should a foreign national Swiss property owner leaves Switzerland, would he/she suffer limitations in the free disposal of the property?

Nationals of EU-EFTA member states with legal and actual domicile in Switzerland and nationals of other countries, with a "C" domicile permit for Switzerland, are not subject to the "Lex Koller" authorization procedure, as provided by the Federal Law on the Acquisition of Real Estate by Persons Abroad of 16 December 1983 (henceforth FL), in order to purchase real estate during their stay in Switzerland.

In fact, these two groups of individuals are on an equal footing with Swiss citizens, as far as the purchase of real estate is concerned and can freely purchase all types of real estate (including multi-family houses or second homes) without specific authorization.

A third-country national (non-EU/EFTA citizen) residing in Switzerland (but without a 'C' permit) may, without authorization, purchase a dwelling for residential purposes as a primary residence only at his actual place of residence, provided he lives there in person, excluding the possibility of renting it out (even in part).

Emigration abroad of a foreign national owner of property in Switzerland

If the dwelling or house has been legally acquired, the owner will not have to sell it when he decides to leave Switzerland. This applies to both primary and secondary (or so-called holiday) residences.

However, the foreign national must inform the municipality in which the property is located that the primary residence will be given up when he leaves for another country, and check that the change of residence (from primary to secondary) does not conflict with the land-use plan of the municipality in which the property is located. Once this requirement has met, the property can be kept at the disposal of the owner who wishes to return to stay there during holiday periods (without being obliged to sell or rent the property).

In addition, it should be borne in mind that since 1 January 2016 the Federal Act on Secondary Homes (henceforth LASEc), which implements the constitutional article on secondary housing (Art. 75b of the Constitution), requires municipalities to draw up an annual inventory of dwellings.

In municipalities where the portion of secondary dwellings exceeds 20%, in principle no new secondary dwellings may be authorized. It is only possible to authorize use as a primary dwelling or as a dwelling used for tourism purposes, i.e. made available to third parties on a long-term basis for short-term tourism.

However, there is a breach of the law if the foreign purchaser did not intend to use the dwelling for himself in the long term from the outset, in particular if he changes his primary residency solely in order to purchase additional dwellings without authorization. In the case of such abusive purchases, the competent authorities may also establish that authorization is required at a later date (art. 25 para. 1bis FL) and order the removal of the offence (art. 27 FL).

A practical case

Let us take the case of a foreigner resident in Switzerland who has purchased a primary residence and a holiday home in two different cantons without having to apply for an authorization. Later, however, the person wishes to move abroad permanently.

What happens to his two properties?

Certainly one of the properties will have to be re-classified as a secondary residence. The LASEC allows the free use (i.e. with possible change of use from primary to secondary dwelling) of all dwellings that existed before the date of the popular vote of the LASEC accepted on 11.03.2012, regardless of whether the proportion of secondary dwellings exceeds 20% in municipalities. While in municipalities above this threshold, the restrictive measures for dwellings built later apply.

Are there any restrictions on the sale of the two properties to third parties?

For the holiday property that already qualified as a second residence, there would be no obstacle to its sale to third parties (either to foreigners or Swiss buyers or foreigners with residence permit C).

On the other hand, for the property that was the primary residence of the seller who moved abroad (regardless of whether he or she is a Swiss citizen or a foreigner), the municipal zoning plan must be consulted in order to ascertain whether there are any destination restrictions for the specific property under LASEC.

In the worst-case scenario (when the property cannot be requalified as a secondary dwelling) the sale can only take place in favour of a purchaser who uses the property as a primary dwelling. In this case, there is a limitation on the determination of the buyer.

For further information on the above, please do not hesitate to contact us

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