



PURCHASING HOUSE / REAL ESTATE IN MADAGASCAR FOR FOREIGNERS

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According to the Malagasy texts, real estate ownership depends on the nationality of the purchaser and on the legal status of the property. When you are a foreign national, it is rather advisable to buy land and build there. The procedure is secure and simpler in this case.

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1. The two determining criteria for purchasing real estate in Madagascar

For people of Malagasy nationality or who have been naturalized Malagasy for more than 10 years, acquisition of house or real estate is done either (1) by purchase, or (2) by lease (simple or emphyteutic), or (3) by title of precarious and revocable occupation. Non-Malagasy purchasers or foreigners may also benefit from the rights of Malagasy citizens according to Law No. 60.146 of 20/09/1960 amended by 2003.029 of 27 August 2003.

The legal situation of the land, and from there that of the house or real estate, also comes into play when purchasing a real estate in Madagascar. Accession varies according to whether the land, for example, belongs to (1) an individual (regardless of his nationality), or (2) property of the Malagasy State and thus classified in the available national private domain or (3) belong to the Malagasy State and classified in the public inalienable domain and imprescriptibly.

The last two cases are public lands. When the land is part of the public inalienable domain and imprescriptibly, it cannot be bought.

2. The procedure to purchasing real estate

All foreigners can obtain authorization to acquire provided real estate; they submit an investment program in Madagascar according to Law No. 2003-028 and Decree No. 2003/897. Investors / foreigners must file an application for authorization to an acquisition of real estate to the **Economic Development Board of Madagascar (EDBM)**. Without this application, they cannot establish themselves on the property.

It is up to the government and the EDBM to determine the positive impacts of the project on Malagasy economy and to see if the land allocation is worth it. The decision to grant the authorization is taken by the government council or the council of ministers according to specific terms and conditions. It should be noted that the number of surfaces to be granted for foreigners is not limited by Malagasy legislation, whether in the context of emphyteutic leases or in terms of purchase.

Failure to implement the investment program under the terms and conditions described in the authorization causes the systematic withdrawal of the right of ownership. This lapse is pronounced by the authority that issued the authorization.

The decision of forfeiture entails the transfer of the real estate in full right to the State. Any dispute relating to the application of the forfeiture must comply with the arbitration procedure indicated in the Malagasy Code of Civil Procedure.

3. EDBM

Any foreigner wishing to acquire real estate is required to file with the EDBM, file consisting of the following parts:

1. a request from the interested party, prepared on a form provided by the Administration,
2. a certificate of registration and legal status of the immovable being acquired,
3. a declaration on the honor of the immovable property held by the applicant in Madagascar;
4. a certificate of nationality,



5. an investment plan and program,
6. a certificate of investment fund of contribution, equal to or greater than US \$ 500,000 or any equivalent in foreign currency.
7. Note that the services of the **Land and Land Services Divisions** are decentralized in the Regions, Districts and Municipalities.

C a u t i o n !

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Up to now, some paragraphs of the texts have been updated, whose summary as follows:

If you plan to invest in real estate in Madagascar, there are two solutions which are available to foreign nationals as part of a real estate investment. All the conditions are presented in this article.

4. Two real estate investment solutions

Foreign nationals can enjoy real estate in Madagascar but cannot become owners as such. Two solutions are available to them as part of this investment (1) the emphyteutic lease, called emphyteusis, and (2) the claim to property rights in the same way as Malagasy citizens. The first option is more for individuals, while the second option has been particularly tailored for companies.

5. The emphyteutic lease

This is the most appropriate option for foreign individuals wishing to invest in real estate in Madagascar. The emphyteutic lease has more advantages than the conventional lease: it allows to enjoy the rights of ownership during a period agreed and defined, between 18 and 99 years. However, the emphyteutic lease has no sale value. In reality, this is a very long-term and renewable lease with certain advantages.

The rights of the lessee: the full enjoyment of the property (without damaging it) in the context of an agricultural, fish-farming, commercial or industrial activity against an annual or monthly rent. It is also possible to sublet the property, or to build for own housing or rental. Finally, the emphyteutic lease offers the opportunity to obtain a bank loan by mortgaging the property.

Moreover, in case of state-owned land (neither registered nor registered), companies and individuals must be eligible for an emphyteutic lease.

6. Purchasing real estate as a company

In the context of a real estate purchase as a corporation, the manager of the business or his representative is required to complete an application form to be added to his file. Here is the complete list of documents to provide:

- Certificate of legal status
- Certificate of registration of real estate
- Investor's nationality certificate
- Investment program
- Proof of ownership of investment funds over \$ 500,000
- Legal status of the company
- Declaration of immovable property held on Malagasy territory.

The file must be submitted to the **Economic Development Board of Madagascar (EDBM)**, the single



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window dedicated to foreign real estate investment in Madagascar. It is this entity and the government which are then responsible for deciding on the eligibility of the file to be accepted or not, and on the granting of the rights of accession to the property (authorization of acquisition of land).

7. Purchase of a property belonging to the State: the stages are as the followings:

- Site identification by **the Survey Service**, with the intervention of a sworn surveyor
- Elaboration of a legal certificate at the **Service of the National Circumscription**
- Request for a reproduction of the land from the **Topographic Service**
- One-stop land application for emphyteutic leases after acquisition of the aforementioned documents
- Tracking by the **Service of the Topographic District** (posting a notice of request on the site to ensure that the land is not the subject of other requests)
- Land reclamation by the National Commission
- Second tracking done by the **Topographic Constituency**
- Notification to the applicant
- In case of a positive response, delimitation of method of sale and definition of price of the property by the administrative authorities.

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8. Purchasing real estate with an individual

In the context of the purchase of an immovable property belonging to an individual, the authorities first use land identification. The site plan and the legal certificate must therefore be presented to the **Regional Planning Department**. For buildings built in urban areas, if they are deemed compliant, a transaction authorization is issued by the same service.

Subsequently, deed of sale is drafted by a notary, an officer of the civil status or the individuals concerned by the transaction. It is then registered with the **Registration and Stamps Department**, which also takes care of legalizing the signatures of the contractors and issuing a deed of assignment.

Subsequently, the sales contract is presented to the **Service of the National and Land Constituency**. In case of a real estate purchased in Antananarivo, it must go through the **Department of the Conservation of Land Ownership**. Upon receipt of duplicate of the current land title, the new owners may occupy the property.

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Useful links:

<http://edbm.mg/>
<http://edbm.mg/land-laws-and-regulations/>