INTRO

The quality lifestyle, fantastic weather, location and incredible beauty of Miami has always attracted buyers and investors from across the globe. We are diverse city and no longer simply a city built on tourism. Real estate in Miami is an export industry and a major component of our local economy.

We deal and transact with people from across the globe, and as such, we are skilled and experienced in working with buyers from the Americas, to Europe, Africa, and beyond.

There are no restrictions on the ownership of real property by a foreign national in the U.S. Both U.S. residents and non-U.S. residents are afforded the same legal rights and privileges and there are very few differences between a U.S. resident or foreign national when purchasing real estate.

Also, unlike other cities or countries, such as the United Kingdom's "Stamp Duty Land Tax" or New York City's "Mansion Tax", the city of Miami, Miami-Dade County and State of Florida do not levy buyers with any excessive or "luxury" transfer taxes or fees at the time of purchase and sale.

Before making an offer to purchase U.S. real property, it is important to have a basic understanding of the general real estate practices that will most likely vary in many aspects from a foreign buyer's home country.

To help guide you through the buying process and provide valuable tips along the way, please see our **Foreign Buyers Roadmap to Purchasing a Miami Condo:**

- U.S. Real Property Practices
- Investment Property
- Evaluating Condominiums
- Cost Components (initial and general)
- Mortgage Financing
- Tax Related Matters
- Post-Closing Considerations
- Common Mistakes Foreign Buyers Make
- U.S. Investment Visas

U.S. REAL PROPERTY PRACTICES

How to find a quality local Miami agent?

Most foreign and domestic buyers begin their search for Miami condos on the internet. There are literally hundreds of real estate sites dedicated to Miami real estate. I think that a good place to start is Realtor.com or Zillow.com. Once you have interest in a specific neighborhood or condo project in Miami, then you can start to dig deeper by visiting a locally specialized site such as RossMiami.com.

Our transaction model is very different to most countries. In the U.S., estate agents cooperate and share information, and in most transactions, there will be an agent on either side representing the seller and one representing the buyer. We all have access to the same database of properties and information. Therefore, once you find an agent that you are comfortable with, they will be able to to work with you on any property for sale in the greater Miami area.

TIP A good place to start is to also ask your friends and colleagues. In addition, you should research a few agents online. Evaluate their websites and try to gauge their level of local experience and knowledge. Then, you should contact a few agents via the web, including any of those referred to you, and start qualifying them. You will find out very quickly who is responsive, knowledgeable and experienced in the market.

Property Records and Transparency in the U.S.

Another difference in the U.S. versus other countries is that real estate information is public record and very transparent. You can easily learn when someone purchased a property, the price they paid, if they have any judgments or liens against the property etc. on the various governmental web sites. Any experienced agent should have the skill and experience to guide you through these channels when researching any particular property or individual seller.

Benefits to using a Buyer's Agent

It is standard practice in a residential transaction that the real estate commission is paid by the seller at closing. The sales commission is typically a percentage of the purchase price that is then split by buyer and seller's agent.

> *TIP* Although there are many benefits to using a buyer's agent, you should consider the following before you start working with a transaction agent that essentially has a vested interested in both the buyer and seller -

(1) A buyer's agent owes you the duties of obedience, loyalty and confidentiality to represent your interests in the transaction.

(2) The inside knowledge and market information that an experienced local buyer's agent will have of any particular neighborhood or building is going to be a huge value add to making your decision.

(3) An experienced agent is going to help you work through all the noise and skillfully guide you through the process and transaction.

INVESTMENT PROPERTY

There are many reasons to invest in real estate, however, the two most important factors should be for the diversification benefits (currency, portfolio etc.) and to act as a hedge against inflation. Due to the cyclical nature of real estate and the fact that rents increase with inflation, real estate prices tend to increase over the long term and at least at the same rate of inflation. Additionally, global diversification in investment properties results in both decreased volatility and increased return on investment of your portfolio.

Financing is a Powerful Instrument

If you are financially secure and can safely afford the monthly payments to service a mortgage, then you should seriously consider financing part of your purchase. Not only does financing a real estate purchase dramatically increase the return on your investment, but it also provides a hedge against inflation due to the time value of money (borrowed in today's dollars with tomorrow's less valuable dollars, assuming inflation takes place).

U.S. Tax Laws promote Real Property Investment

There are certain cash and non-cash rental expenses that are allowed to be deducted on your tax return, including mortgage interest, property taxes, operating expenses, depreciation and repairs (refer to IRS guidelines here). As the owner of a residential rental property you may depreciate your property over a period of 27.5 years. Therefore, in general an investor in a residential property should not have to pay any ordinary income taxes during the first few years of ownership.

> ***TIP*** The IRS allows any losses from early years to be carried forward to future years when there is taxable income, which can be an effective tool to erase any income for the first several years of ownership.

Please consult with a qualified local tax specialist to learn more about your home country's tax treaty with the U.S., if any, and how this may impact your overall tax liability in the U.S. and in your country of residence.

EVALUATING CONDOMINIUMS

Develop a Plan before you Schedule any Site Visits

Before setting out and visiting properties, I suggest that you have a plan in place. It is important to know what is workable for you and your family, and that sometimes deciding on a price range is the easiest part of the equation.

To name a few, consider the building's location, walkability of the neighborhood, size and layout of interior space, views, parking, security, building amenities, renting and pet restrictions. The Ross100 Condo Index can be a very useful tool to research buildings and locations to determine if they satisfy your most important criteria.

Visiting Miami Condominiums

I recommend that you do not plan to visit more than 5 or 6 condo units in one day as you can quickly overwhelm yourself with too much information. Also, unless you find a condo that appeals to you with an asking price that fits your price range, do not waste a lot of time looking at all the amenities of each building.

When visiting each building, focus on looking at and learning about the criteria that are most important to you. Ask questions of your agent, learn about the dynamics of each neighborhood and building, history of each building, recent sales in the building etc. Once you identify two or three properties as possible candidates, then it is time to look beyond the surface.

Evaluating a Condominium

As the owner of a condominium, you are much like a shareholder in a corporation. Your percentage share of ownership can range from as little as 1 percent to 10 percent or more of the common elements (common areas). As such, you need to start learning about the finances and management of a condominium, including, but not limited to, what are the current monthly maintenance fees (service charges), do they have reserves in place, are there any current or future assessments, is there any ongoing litigation etc?

Additionally, you should also learn about the governance of the condo, in particular, the application process, interview requirements, rules and regulations, occupancy restrictions, and if newer construction ask if the developer turned over control of the association to the owners?

> *** TIP*** Condominiums are governed by a set of bylaws, rules and regulations and the declaration of condominium. Although this information will be provided to you during the

contract phase, ensure that you learn about any specific rules and occupancy restrictions that may impact your ability to use or rent out the property early in the process.

*** TIP*** Before you make an offer on a condo, make sure that you are aware of the condo application requirements of the association. Remember, most condominiums require that a buyer obtain an approval in writing from the association before closing. This process may only require a quick criminal background check, while others may require bank statements, reference letters, employment verification, and even a personal interview.

*** TIP*** Always make a point to request a copy of the minutes of the three most recent meetings of the condo association. The minutes may alert you to any ongoing issues in the building, including special assessments, construction projects, ongoing litigation, or budget decisions that may be under discussion.

COST COMPONENTS - INITIAL

Purchase price

Unlike many other countries, the purchase price of an existing Miami property includes all of the kitchen appliances, light fixtures, window treatments, smoke detectors, ceiling fans etc., that are owned by the seller and existing on the property, unless specifically excluded as personal property in the purchase and sale contract.

New Construction Condominiums

Typically, the purchase price will include a fully complete kitchen with all kitchen appliances, washer and dryer, plus finished bathrooms (may exclude bathroom mirrors). However, in most cases it will not include flooring (interior and exterior), closet systems and window treatments. Therefore, one of the benefits of buying a new construction unit is that buyers have the opportunity to finish the property to their personal standards. This expense can range anywhere from twenty or thirty thousand dollars for a one bedroom to well over fifty thousand dollars for a two bedroom condo.

Closing Costs

Typically, the estimated closing costs range from 1 to 1.5 percent of the purchase price in an all cash transaction, and range from 3 to 5 percent of the purchase price with financing. The difference between the two estimates is the cost of obtaining and recording a new purchase money mortgage.

In Miami, the typical closing costs to be paid by the buyer when purchasing a condominium includes (**Note:** many of these fees vary by the actual provider of the service, buyer's bank or lender, number of pages in each document to be recorded etc.):

- Buyer's attorney and closing agent fees (approx. $750 to $1,500)
- Property inspections (approx. $300 to $800)
- Appraisal fees, if applying for financing (approx. $400 to $750)
- Loan expenses, if applying for financing, (approx. 0.5% up to 3% of loan amount)
- Transfer taxes, if closing with financing (0.55% of loan amount)
- Mortgage recording fees, if closing with financing (approx. $200)
- Lender's title insurance policy and endorsements, if closing with financing (approx. 0.15% of loan amount)
- Owner's title insurance policy and related charges (approx. 0.5% of purchase price)
- Deed recording fees (approx. $40)
- HOA/Condominium application, advance maintenance and other fees (varies by condo project and scope of fees)

*** TIP*** It is in your interests to select the closing agent, which the buyer has the right to do in any purchase and sale transaction. You also have the ability to negotiate and pass on some of your closing costs to the seller in the standard contract.

*** TIP*** When selecting a closing agent or real estate attorney, pay attention to their individual fee structure. Some closing agents will offer an attractive closing fee, but they will also charge excessive fees for courier services, title searches, document preparation etc. In most cases, it may be cheaper to work with a flat fee provider.

*** TIP*** When purchasing a new construction condo, the seller or developer will look to control the closing process by incentivizing you to utilize their designated closing agent and in turn they will cover most of the closing costs. Keep in mind that while this may reduce your out-of-pocket expenses, it may not be in your best interests in the transaction.

COST COMPONENTS - GENERAL

Condo maintenance fees (also known as "common charges" or "service charges")

In general, the condo maintenance fees in the majority of Miami condominiums range from $0.60 to $1 per square foot per month. Some luxury condominiums, and in particular condominium hotels, have monthly maintenance fees in excess of $1.00 per square foot per month. Therefore, you can expect a 1,000 square foot (90 sq. metres) condo to cost you in the range of $600 to $1,000 per month in maintenance fees.

Typically, the monthly maintenance fees cover the expenses for utilities including common area heating, cooling, and electricity; building water and sewer; garbage removal; common area maintenance; security; building insurance (general liability, windstorm and flood); management and staffing; and operation of all the building amenities (spa, fitness center, party rooms, pools, parking etc.).

> *** TIP*** If you are looking for a condo with low monthly common charges, then avoid buildings that show signs of poor condition, disrepair or management neglect, including those with excessive levels of staffing and/or building amenities, such as condo hotels.
>
> ***TIP*** Those buildings that are direct oceanfront always require more general maintenance and upkeep compared to those off the beach. This also applies to the frequency and direct cost of any special assessments for major building upgrades and improvements.

Real estate or Property Taxes

Real estate taxes are levied by Miami Dade County and are paid in arrears (behind) each year. Under Florida Statutes 193.011 all properties must be valued by July 1st every year. The assessed value ("just value" or "market value") is determined by the Miami Dade County Property Appraiser and the taxes are paid to the Miami Dade County Tax Collector.

Although there is no specific ratio to calculate future property taxes, as a general rule of thumb you should expect to pay real estate taxes in the amount of 2 percent of the purchase price. In some states in the U.S.A., properties are immediately re-assessed upon sale, but this is not the case in the state of Florida. While the property appraiser has the right to increase the property taxes the year following a sale, each year thereafter the assessed value is subject to either a 3 percent cap (if your primary residence and you qualify for a homestead exemption) or a 10 percent cap (if non-homesteaded, includes second homes or investment properties).

TIP If you plan to make any changes to title post closing, such as transferring ownership from an individual to a LLC or trust, it may may be considered as a sale the following year. Therefore, it is recommended that you consult with a local attorney and/or tax specialist before making any changes to title to fully understand the legal and tax ramifications.

There are a number of requirements to qualify for a homestead exemption, however, the two most important criteria are that you can provide proof of Florida residency AND that you can prove that you owned the property on January 1st in the year that you file for the exemption.

As a guideline, here are the sequence of events for evaluation and taxing of an individual property in Miami each year -

Jan 31st - Deadline to receive 2 percent discount for early payment of prior year's taxes
Feb 28th - Deadline to receive 1 percent discount for early payment of prior year's taxes
Mar 1st - Deadline for property owners to file all exemptions for current year
Mar 31st - Deadline to pay prior year's tax bill
Apr 1st - Prior year's unpaid taxes become delinquent
May 1st - Miami Dade County issues tax certificates for prior year's delinquent taxes
Jul 1st - Properties must be assessed by this date
August - Property Appraiser mails out TRIM notice or notice of proposed taxes
Nov 1st - Property owner's receive the annual tax bill
Nov 30th - Deadline to receive 4 percent discount for early payment of current year's taxes
Dec 31st - Deadline to receive 3 percent discount for early payment of current year's taxes

Homeowner's Insurance

Condominium insurance closes the gap between the master insurance policy of the condominium association, which generally covers the building and common areas, and your property and personal liability. A condo insurance policy should provide you with personal property coverage, personal liability protection, and coverage of additional living expenses, improvements, and any loss assessments (from condo association).

Many insurers will provide you with certain discounts for newer construction buildings, hurricane impact windows and other improvements. In most instances, you will be required to obtain an inspection to qualify for these discounts. The cost of condo insurance varies widely by risk, the type and amount of coverage, but in general, the cost should range anywhere from a few hundred dollars up to three thousand dollars per year.

TIP We recommend that you consult with a local insurance professional before closing to determine the best policy, cost and coverages to meet your needs.

Real Estate Agent Commissions

In a residential purchase and sale transaction in the U.S., it is standard practice that the seller pays the real estate commission at closing. This commission is then divided by the buyer's agent and the seller's agent.

In a residential lease transaction, the landlord pays the real estate commission as well. This commission is also divided by the landlord's agent and tenant's agent. In Miami, it is common practice for a **landlord** to pay a rental commission equivalent to the either one month's rent or ten percent of the gross value of the lease.

TIP As the seller pays the real estate commission, using a buyer's agent to represent your interests, provide market insights and guide you in the process is an absolute must in any transaction.

Property Management

Unlike the commercial real estate market, there is a limited number of professional property managers to manage an individually owned condominium, or single family home in Miami. As such, many buyers hire the real estate agent that represented them in the purchase and sale transaction.

The fees that you will pay to a property manager will vary considerably depending on the scope and scale of the services provided. As a general guideline, you can expect to pay a management fee of $100 and up per month. If the property is rented on a short term basis (daily, weekly, or monthly), then you can expect to pay a base management fee plus a monthly incentive fee that will range anywhere from 10 to 20 percent of the gross rental income.

Typically, property management services will include payment administration (utilities, maintenance fees, insurance etc.), coordinating any necessary repairs and maintenance, handling any tenant requests or issues, managing the logistics of a rental property (collecting rents, notices, inventory etc.), and providing any periodic reports or statements (monthly, quarterly etc.).

TIP Ensure that you hire a licensed and insured company and that you enter into a formal property management agreement to avoid any unwelcome liability or other legal issues down the road.

MORTGAGE FINANCING FOR FOREIGN NATIONALS

The residential mortgage market in the U.S. is a multi-trillion dollar industry and offers a multitude of residential loans for foreign nationals as well. Most of the large U.S. banks and local Miami banks offer purchase mortgages and refinance mortgages to foreign nationals. Each bank, or mortgage lender, will offer different types of loan products, maximum loan limits, underwriting criteria, reserve requirements etc.

> *TIP* While the large multi-national banks, such as Chase, Wells Fargo or HSBC, may offer more attractive interest rates to foreign nationals, they have the least appetite for risk and the strictest guidelines when underwriting condos compared to several of the local Miami banks, such as Total Bank or BAC Bank of Florida.

Although there is no "one size fits all" requirements to obtaining a foreign national loan, please read the following as a general guideline:

- Most banks require a down payment in the range from 30 to 40 percent of the **lesser of** the purchase price or appraised value of the property.
- Some banks will not lend to a foreign national to purchase a primary residence nor for investment purposes, therefore, the purchase may need to be classified as a vacation home.
- The initial documents requested by the bank may include a completed loan application together with copies of your passport, valid U.S. visa, purchase and sale agreement, valid driver's licence (or National Identity Document), and recent bank statements.
- In some cases, the bank may ask you to provide certain personal financial information to a credit reporting agency, such as Experian, to compile an international credit report.
- The bank will want to "source" and "season" the funds that you use for the down payment, closing costs and to meet their reserve requirements, if any. This means that they will want to see the funds in your bank account for at least 60 days and they may question any irregular or large deposits on the statements (varies by bank).
- In some cases, banks will allow you to take ownership of the property in the name of a U.S. company (a Florida LLC, corporation etc.) and the owner of the U.S. company may be an offshore trust or corporation. ** Please read section titled "Common Mistakes" **

- If a self-employed borrower (or purchaser), the bank will request that you provide several pieces of information concerning your income, employment, credit history, assets and liabilities, which may or may not include:
    - A letter from a qualified accountant in your country of residence to state your income for at least the past two years, an estimate of your current year's income, and details on your position and percentage of business ownership.
    - Verification of your accountant's registration or license number in your country of residence.
    - Financial statements for the past two years, including a profit and loss statement and balance sheet for you and/or your business.
    - Bank or credit reference letters to show a business relationship for at least the past 24 months and that your account is in good standing.
    - Proof of ownership of your business, business history and other information such as the company's website address.
- If an employed borrower (or purchaser), the bank will request that you provide several pieces of information concerning your income, employment, credit history, assets and liabilities, which may or may not include:
    - An official letter from your employer to verify your employment status, including current annual income, previous two year's income, date of hire and position.
    - Information on your employer, including website address.

TIP When closing on a property that involves financing, or even a mortgage refinance, the bank will require that all the loan and closing documents be signed in person and notarized (U.S. notary) by all borrowers. This means that you may have to return to Miami for the closing, or make an appointment with the nearest U.S. Embassy or U.S. Consulate to notarize your documents and complete the closing.

TAX RELATED MATTERS

Foreign Investors Real Property Tax Act "FIRPTA"

The sale, transfer, gift, or exchange of U.S. real property by a foreign national is subject to a fifteen (15%) percent withholding tax of the gross purchase price at closing, known as the Foreign Investors Real Property Tax Act or "FIRPTA". This law is in place to ensure that foreign nationals pay any capital gains taxes when they sell their real property.

The legal requirement to withhold 15 percent exists whether or not there is any gain or tax liability as a result of the sale. Although it is technically a withholding tax and **not** an added tax to foreign nationals, there are certain exemptions and structures that one can employ at the time of purchasing the property to avoid FIRPTA later at the time of sale. Additionally, when a U.S. tax return is filed reporting the capital gains tax for the year in which the sale took place, if there is a refund due, then the overpayment will be refunded to you, the filer.

> ***TIP*** An effective strategy that is often employed by U.S. non-residents to avoid meeting the FIRPTA requirement and to defer any capital gains tax to a later date, is known as a 1031 Exchange.

U.S. Estate Taxes

The United States levies an estate tax of up to forty-six (46%) percent on the portion of a foreign individual's gross estate situated in the United States that exceeds $60,000. However, with some careful upfront tax planning, if a foreigner purchases U.S. real property through a domestic LLC that in turn is owned by a foreign corporation or trust these vehicles should shield a foreigner from U.S. estate tax.

1031 Exchange

A 1031 Exchange is a tax-deferred exchange of one investment property for another, as long as the properties meet the definition of a "like-kind" property in the tax code. Foreign sellers also qualify to use a 1031 Exchange. Instead of paying capital gains taxes on the sale, the investor is allowed to use the funds to purchase a new property and defer the tax liability to a future date. In effect, this strategy allows your investment to grow on a tax deferred basis.

The definition of "like-kind" investment property is generally quite broad and includes several classes of real estate, such as single family homes, vacation rental properties and commercial property, to name a few. For example, you can swap an investment condominium for an apartment building, or even raw land. Please note that the rules for following a 1031 Exchange are very strict and must be adhered to.

> *TIP* The main advantage of a 1031 Exchange is that you may sell a property without incurring the immediate tax liability. Hence, you are able to keep the purchasing power in today's tax deferred dollars while at the same time exchanging properties.

> *TIP* There are two important timing rules that you must follow: (1) The IRS states that you you may identify up to three replacement properties within 45 days of the sale as long as you eventually close on one of them, and, (2) you must close on the purchase of the new property within 180 days of the sale of the original property.

Non-Resident Taxes

According to the IRS, a nonresident alien is generally subject to U.S. taxation on U.S. source income. This includes certain investment or other passive income, such as rents from property used or located in the U.S., and any gains received from the sale of any real property interests in the U.S.

U.S. source income that is not connected with a U.S. trade or business is taxed at a rate of thirty percent (or lower tax treaty rate). This tax rate is applied to gross income before any deductions for expenses.

> *TIP* To file a U.S. tax return, you will need to obtain a tax identification number, which requires you to complete and submit Form W-7 and certain documents to verify your identity and foreign status.

A nonresident alien's income is taxed at graduated tax rates if an election is made to treat the income as effectively connected to a U.S. trade or business. This includes, but is not limited to, income from real estate held for investment. This permits the nonresident alien to reduce gross income by making deductions for depreciation, real estate taxes, interest charges, and other expenses, with the result that the U.S. income tax is levied only at the regular graduated rates on net income from these sources.

> *TIP* As a foreign investor, even if you incur tax losses during the first few years of ownership and do not owe any taxes, you must still file annual tax returns in order to make this election.

When you sell certain assets, such as real estate, you may incur capital gains taxes. If the original purchase price of the property plus the associated expenses (also called the "cost basis") is less than the proceeds you receive from the sale of the property, then you incur a capital gain. The capital gains tax rate will vary by your tax bracket. In general, most non-residents pay a capital gains tax rate of less than 20 percent, however, depending on your U.S. income, ownership structure and specific case, the capital gains tax may range from twenty (20) to thirty-five (35) percent.

> *TIP* The capital gains tax rate is significantly higher for a corporation versus that of an individual. Ensure that you consult with a qualified tax professional to decide on the best tax strategy for your personal situation.

In some cases, tax treaties may allow some residents of foreign countries to be taxed at a reduced tax rate, or to be exempt on certain U.S. source income.

For a more detailed explanation of U.S. taxation of nonresident aliens, please refer to the information provided by the Internal Revenue Service, or global tax advisory firm, KPMG.

U.S. Resident Exclusion on Sale of Principal Residence

The IRS provides that U.S. Residents may exclude the gain realized on the sale or exchange of property if the property was owned and used as the taxpayer's principal residence for at least 2 years during the 5-year period ending on the date of the sale or exchange. The amount of the exclusion is limited to $250,000 in profit ($500,000 for married couples filing jointly). There are certain exceptions to this rule. For example, if you sold your house before living there for two years due to the relocation of your job.

Prior to purchasing U.S. real property, we recommend that you consult with a qualified local tax specialist and obtain the necessary legal advice to learn more about your home country's tax treaty with the U.S., if any, and how this may impact your overall tax liability in the U.S. and in your country of residence.

POST CLOSING CONSIDERATIONS

Prior to closing and completing your real estate transaction, we suggest that you start to plan and take the necessary steps to manage the ownership and enjoyment of your new Miami property.

Condominium Maintenance Fees

Following processing the new owner condo application, ask the building manager (or office) what options are available for an owner to pay the monthly condo fees. While many of the larger buildings that are managed by third party property management companies, such as First Service Residential or Atlantic & Pacific Management, accept online credit card payments or direct debit from your local bank account, others require you to mail an actual check each month as the only acceptable form of payment.

> *TIP* Even if a property management company or condo association accepts credit cards as a form of payment they may not accept an international credit card. In most cases, it will benefit you to open a local bank account to process your condo fees and other expenses.

Condo insurance

International buyers of condominiums often neglect to purchase condo insurance, known as a HO6 insurance policy. Often they are misled into believing that a condominium's master insurance will also cover their unit and contents from damages caused by fire, water, wind, theft, or even provide personal liability protection. However, the purpose of the master insurance policy is to provide general liability, property, windstorm and flood coverage for the structure (common areas, walls, floors, elevators, roof etc.) and leaves the condominium unit owner responsible for their fixtures, appliances, improvements, personal property and often the interior walls.

> *TIP* Many homeowner's or condo insurance policies do not extend coverage to a property that you rent out. As such, if you plan to rent out your property, you need to think about how often you plan to rent it out, whether weekly, monthly or seasonally, and purchase adequate landlord property insurance.

Opening a U.S. Bank Account

Most of the local Miami and national U.S. banks will allow you to open an account with only a U.S. address (for example, your property address) and your passport. The majority of banks require that you open the account in person. While some clients are apprehensive to open a U.S. bank account, there are many benefits to opening and maintaining a U.S. bank account, of which some include:

- Paying your local utility expenses, deposits etc.
- Paying your monthly condo maintenance and any related fees.
- Paying your annual real estate taxes to the Miami Dade Tax Collector.
- Receiving rent payments, rental security deposits etc.
- Paying housekeeping, maintenance and other contractors.

> *TIP* If you apply for foreign national financing, most local banks will require that you open an account with them and deposit a certain amount of funds as reserves for payment of the mortgage, maintenance fees and taxes prior to closing and funding the transaction.

Property Renovations

As with any piece of real estate, one of the biggest challenges for an international client is to renovate or make cosmetic upgrades to their property. In general, the cost of major renovations includes materials, labor, design, permitting, engineering, and architectural fees.

Miami is a city that has a multitude of contractors, subcontractors, artisans and trade specialists. While it is not difficult to find a contractor in Miami, it can be a major challenge to find a reliable and trustworthy person, or a company that has the necessary experience and credentials to complete the project to your satisfaction.

> *TIP* It is always in your interest to hire a licensed, insured and bonded contractor. This ensures that you are protected should an accident occur, or if the contractor fails to perform according to the contract.

A common issue that often rears its head during, or at the onset of a renovation, is clearing the necessary building permit process. Each municipality, such as the City of Miami or City of Miami Beach, has different permit requirements, building codes, and fees when going through a property renovation. For example, one municipality may require that you apply waterproof paint on the balcony floor and have it inspected before installing tiles, while others may not. Also, some municipalities may issue a permit within a few days and others may take a few weeks.

TIP There are several local firms that offer what we refer to as “permit expediting” and “permit administration”. These permit expediters can save you and your contractors a significant amount of time and far less headaches when dealing the each city’s building and zoning and fire departments.

TIP Always consult with your trusted real estate advisor before undergoing any cosmetic or major renovations to fully understand what adds real value and what may be worth the expense as a personal preference or indulgence.

You should also keep in mind that most condo buildings will require that you apply for permission from the condo association before embarking on a major renovation (for ex: new flooring, upgrading your kitchen cabinets, moving walls etc.). Additionally, most buildings have specific requirements that will need to be adhered to before installing flooring, windows etc. For example, a specific type or thickness of soundproofing material, or style and design of hurricane impact windows.

As part of this process, the association may require copies of the permits, contractor’s license and proof of insurance. Some condo buildings go as far as requiring a certificate of insurance with the condo association included as an additional insured on the policy as well.

COMMON MISTAKES FOREIGN BUYERS MAKE

Although foreign buyers are afforded the same rights and privileges as that of U.S. citizens and residents, there are a few mistakes that they commonly make.

Mistake #1: *FIRPTA* - The sale, transfer, gift, or exchange of U.S. real property by a foreign national is subject to a fifteen percent (15%) withholding tax of the gross purchase price of the property at closing, known as the Foreign Investors Real Property Tax Act or "FIRPTA". This law is in place to ensure that foreign nationals pay any capital gains taxes. The legal requirement to withhold 15 percent exists whether or not there is any gain or tax liability as a result of the sale. Although it is technically a withholding tax and **not** an added tax to foreign nationals, there are certain exemptions and structures that one can employ at the time of purchasing the property to avoid FIRPTA later.

Mistake #2: *U.S. Estate taxes* - The United States levies an estate tax of up to forty-six (46) percent on the portion of a foreign individual's gross estate situated in the United States that exceeds $60,000. However, with some careful upfront tax planning, if a foreigner purchases U.S. real property through a domestic LLC that in turn is owned by a foreign corporation or trust they should shield a foreigner from U.S. estate tax.

> *TIP* The capital gains rate for a corporation is higher versus that of an individual. Ensure that you consult with a qualified tax professional to decide on the best tax strategy for your personal situation.

Mistake #3: *Property insurance* - International cash buyers of condominiums often neglect to purchase homeowner's insurance, known as a HO6 insurance policy. Often they are misled into believing that a condominium's master insurance will also cover their unit and contents from damages caused by fire, water, wind, theft, or even provide personal liability protection. However, the purpose of the master insurance policy is to provide general liability, property, windstorm and flood coverage for the structure (common areas, walls, floors, elevators, roof etc.) and leaves the condominium unit owner responsible for their fixtures, appliances, improvements, personal property and often the interior walls.

Mistake #4: *Rental income* - According to U.S. tax law, non-resident aliens are taxed on all U.S. source income and this includes any net rental income (rental income less qualified expenses). Therefore, there are certain steps that one must take to obtain an Individual Tax Identification Number (ITIN) and/or Employer Identification Number (EIN) and file an annual tax return. If you do not file your annual tax return in a timely manner, then the IRS will tax you at a flat tax rate of thirty (30) percent of the gross rental income. If this should occur, you will not be allowed to deduct any standard expenses such as property taxes, maintenance fees, depreciation, insurance, closing costs etc.

Mistake #5: *Substantial Presence* - According to the IRS, you will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

- ➔ 31 days during the current year, and
- ➔ 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
    - ◆ All the days you were present in the current year, and
    - ◆ One third (⅓) of the days you were present in the first year before the current year, and
    - ◆ One sixth (⅙) of the days you were present in the second year before the current year.

For example:

You were physically present in the United States for 120 days in each of the years 2012, 2013, and 2014. To determine if you meet the substantial presence test for 2014, count the full 120 days of presence in 2014, 40 days in 2013, and 20 days in 2012. Since the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for the calendar year 2014.

A structure that may work for one foreigner may not work for another. Therefore, it is advisable to seek out the necessary legal, tax and professional advice before purchasing U.S. real property to avoid any demanding and expensive surprises later.

U.S. INVESTMENT VISAS

Over the past few years, we have worked with many international clients who immigrate to Miami, whether permanently or on a temporary basis via an investment visa. The two most common options that most of our clients qualify under are either the EB-5 Immigrant Investor visa or the E-2 Treaty Investor visa.

Below are some highlights of either option as described by the U.S. Department of Homeland Security. For more detailed information, please read the description of either program and consult with a qualified local immigration lawyer.

EB-5 Immigrant Investor Visa

The Immigrant Investor Program, also known as "EB-5," was created to stimulate the U.S. economy through job creation and capital investment by foreign investors. Certain EB-5 visas also are set aside for investors in Regional Centers designated by USCIS based on proposals for promoting economic growth. In Miami and south Florida, we have several approved Regional Centers.

All EB-5 investors must invest in a new commercial for-profit enterprise, which is an enterprise:

- Purchased and the existing business is restructured or reorganized in such a way that a new commercial enterprise results, or
- Expanded through the investment so that a 40-percent increase in the net worth or number of employees occurs.

Job Creation Requirements:

- Create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years of the investor's admission to the United States as a Conditional Permanent Resident.
- Create or preserve either direct or indirect jobs in a troubled business:
    - Direct jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital.
    - Indirect jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise affiliated with a regional center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a regional center.

Capital Investment Requirements:

Capital means cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the immigrant investor. Please note that investment capital cannot be borrowed and minimum capital investments are:

- ❖ The minimum qualifying investment in the United States is $1 million.
- ❖ Targeted Employment Area (High Unemployment or Rural Area). The minimum qualifying investment either within a high-unemployment area or rural area in the United States is $500,000.

E-2 Treaty Investor Visa

The E-2 visa allows a national of a treaty country to be admitted to the United States when investing a substantial amount of capital in a U.S. business. Certain employees of such a person or of a qualifying organization may also be eligible for this visa classification.

The treaty investor must -

- ❖ Be a national of a country with which the United States maintains a treaty of commerce and navigation.
- ❖ Have invested, or be actively in the process of investing, a substantial amount of capital in a bona fide enterprise in the United States.
- ❖ Be seeking to enter the United States solely to develop and direct the investment enterprise. This is established by showing at least 50% ownership of the enterprise or possession of operational control through a managerial position or other corporate device.

An investment is the treaty investor's placing of capital, including funds and/or other assets, at risk in the commercial sense with the objective of generating a profit. The capital must be subject to partial or total loss if the investment fails.

Qualified treaty investors and employees will be allowed a maximum initial stay of two years. Requests for extension of stay may be granted in increments of up to two years each. There is no maximum limit to the number of extensions an E-2 nonimmigrant may be granted.

Treaty investors and employees may be accompanied or followed by spouses and unmarried children who are under 21 years of age. These family members may seek E-2 nonimmigrant classification as dependents and, if approved, generally will be granted the same period of stay as the employee. Spouses of E-2 workers may apply for work authorization, and if approved, there is no specific restriction as to where the E-2 spouse may work.

A structure that may work for one foreign national may not work for another. Therefore, it is advisable to seek out the necessary legal, tax, immigration and professional advice before applying for a U.S. investor visa.