



Editorial

Legislation on the acquisition of real estate in Switzerland by persons domiciled abroad is definitely a very complex matter. One need only consider that the legal situation may be different depending on the nature of the real estate – whether it is for commercial or residential usage – or on the origin of the foreign purchaser – a national of the European Union or of another country, with or without a residence permit. Similarly, the location of the property may also alter the legal situation, depending on whether or not it is located in a tourist area...

Furthermore, what we were envisaging barely one year ago is being confirmed today: total deregulation is clearly no longer on the agenda. This makes it all the more advisable to continue with the task that we had embarked upon – we would point out that this Newsletter is the third that we are devoting to the subject of the “Lex Koller” – that is, summarizing briefly and comprehensibly the different facets of this specifically Swiss legal issue. We feel that this forms part of the roles and mission of SPG Finest Properties, a considerable and growing proportion of whose customers are of foreign origin.

Thierry Barbier-Mueller
Chief Executive Officer
of the SPG Group

ACQUISITION OF HOLIDAY HOMES IN SWITZERLAND BY FOREIGNERS

from outside the UE and EFTA with no C residence permit in Switzerland

By Maître Cyril Troyanov and Ms. Sophie Laurent, Secretan Troyanov, Attorneys-at-law.

The benefit of one of the best qualities of life in the world has made Switzerland an attractive country for the purchase of real estate. Considering its environment, economic stability, security and tax advantages, Switzerland is a privileged place in which to live or spend one's vacations.

However, in the face of fears that foreigners may take possession of Swiss soil, in particular in certain highly touristic regions, the authorities have, since the beginning of the 1960s, implemented measures intended to restrict access to property by foreigners

in Switzerland. Currently it is the Federal Law dated December 16, 1983 on the acquisition of real estate by persons domiciled abroad (LFAIE also referred to as “Lex Friedrich” or “Lex Koller”) that regulates access to property.

In order to determine whether you are affected by the scope of the LFAIE, you must consider (1) your country of origin, and (2) if applicable, whether you hold a residence permit in Switzerland. As a rule, the principles for applying the LFAIE are as follows:

THE SCOPE OF THE LFAIE

Permit Origin	With no residence permit in Switzerland	With an “L” residence permit (cf.1)	With a “B” residence permit (cf.2)	With a “C” residence permit (cf.3)
National of EU or EFTA	Subject to the LFAIE	Same treatment as a Swiss citizen	Same treatment as a Swiss citizen	Same treatment as a Swiss citizen
National of other countries	Subject to the LFAIE	Subject to the LFAIE	Subject to the LFAIE	Same treatment as a Swiss citizen

(1) L Permit: residence permit for a short stay in Switzerland (less than 1 year).

(2) B Permit: residence permit for a one-year stay in Switzerland (EU nationals: valid 5 years).

(3) C Permit: permit granting full residence rights in Switzerland, which is obtained after 5 or 10 years, depending on one's nationality.



In what follows the persons subject to the LFAIE will be referred to generally as "Foreigners".

■ *Purchase of a holiday home*

A Foreigner may only purchase a holiday home in the cantons offering this possibility in their cantonal legislation, i.e. = **Appenzell Ausserrhoden (AR), Bern (BE), Fribourg (FR), Glarus (GL), Grisons (GR), Jura (JU), Lucern (LU), Neuchâtel (NE), Nidwald (NW), Obwald (OW), St. Gallen (SG), Schwyz (SZ), Schaffhausen (SH), Ticino (TI), Uri (UR), Vaud (VD) and Valais (VS)**. It is therefore not possible to purchase a property of this type in the other cantons; for example, in Geneva or Zurich.

Furthermore the property that is being considered must be located in one of the tourist regions defined as such by the canton on the territory of which it is located.

Finally, the authorization will only be granted within the limit of the annual quota in force for the zone in which the property is located. To this end, you have to apply for an authorization to the cantonal authority of the place where the real estate that you are interested in is located. The application may only be made in your own name and not through a company.

The plot must have a maximum surface area of **1000 sq. metres**. However, in practice the surface area may be up to 1500 sq. metres, but the projected purchase will then be transmitted for review to the first instance authority to examine whether this purchase constitutes a capital investment (which is a case prohibited by the LFAIE).

The maximum size of the floor surface area will be **200 sq. metres**. In actual fact, the maximum size may also be up to 250 sq. metres.

If you wish to acquire a plot of land to build on, you will have to begin construction within a maximum period of one to two years.

You will have the **option of letting this property temporarily**, but you will not be able to let it all year round.

Quota system

In order to fight against an uncontrolled increase in second homes and holiday homes in the tourist locations and in order to counter the proliferation of "cold beds" (holiday homes that are rarely used), the Federal Government has instituted an **authorizations quota system** for the purchase of holiday homes in these places.

The **number of annual authorizations** for the whole of Switzerland amounts to **1500** for the year 2008. The Swiss government allocates the quotas for each canton according to their designation as tourist regions and to the proportion of real-estate property which is foreign-owned on their territory.

Since the tourist cantons (Valais, Vaud, etc.) quickly use up their quotas, the Federal Office of Justice may, at their request, transfer unused quotas between cantons on October 1 of any given year. However, the number of additional authorizations can, in no event, exceed half of the quota of authorizations that was initially granted.

It should be noted that no authorization taken from the quota is required if the seller of the real estate in question was a Foreigner already holding an authorization to purchase said holiday home.

Finally, if you yourself, your spouse or your child aged less than 18 years already own a second home or holiday home in Switzerland, you will not be able to purchase another property of the same type without previously having sold the first piece of real estate.

Procedure

In practice, if you decide to purchase a property, you will go through a notary public. After having arranged for the mortgage if necessary, after signing the deed of sale (except in the canton of Valais, see below) and after having paid a certain percentage of the sale's price at the time of signing, the notary will complete the required procedures with the competent authority at the cantonal level so that you obtain the necessary authorization. The balance of the purchase price will be payable at the time of the definitive purchase. It is not possible to be specific about the average period of time required to obtain the authorization because it can vary between six months and two years (!), depending on the municipality concerned. In the meantime one can still envisage requesting a temporary rental of the property from the vendor, subject to payment of a rent. Furthermore the possible consequences in the event of denial of the final authorization must be foreseen between the vendor and purchaser.

Canton of Valais (VS)

The government has determined more than **117 places** where the purchase of holiday homes is deemed necessary for the development of tourism. The 2008 quota for holiday homes amounts to **330** units.

Allocation of the individual authorizations is attributed by the **Legal department of the Land Registry**, which is the competent first-instance authority:

- on the basis of the applications submitted,
- by giving priority to sales of dwellings which, owing to the way in which they will be utilized, will ensure a better occupancy rate (e.g. operating or letting contracts),
- by taking account of a reasonable ratio between existing and new holiday homes,
- and of a balanced ratio between Swiss and foreign property owners.





The competent authority for granting authorizations is the **Commission for the acquisition of real estate by persons domiciled abroad**.

The government has drawn up a list of 20 localities where the acquisition of holiday homes by Foreigners is necessary for the development of tourism; they include Bulle, Gruyères or Châtel-Saint-Denis.

Canton of Jura (JU)

The 2008 quota amounts to **20** units for holiday homes.

A decree has drawn up a list of **18** localities where the purchase of holiday homes may be authorized. The first-instance authority with competency to receive authorization applications is the **Legal Department of the Canton of Jura**.

Canton of Neuchâtel (NE)

The 2008 quota amounts to **35** units for holiday homes.

A decree has specified the tourist localities in the canton, **50** including La Chaux-de-Fonds or Neuchâtel.

The first-instance authority with competency to grant authorizations is the **Cantonal Commission for approval of real-estate acquisitions by persons domiciled abroad**. As a rule, the authorizations that are part of the quota are granted in the order in which the applications were made.

■ *Towards the repeal of these restrictions?*

A consultation procedure had been introduced at the end of 2005 in order to examine the advisability of repealing the LFAIE.

Following the successive amendments made to this law, its scope has been considerably restricted. At the present time the priority of the federal authorities is rather to limit the number of second homes and holiday homes for environmental-protection and regional-planning reasons, whatever the purchaser's nationality.

In July 2007, the Swiss government had adopted a message about the repeal of the LFAIE and a message about the amendment of the Federal Law on town and regional planning. In order to ensure that the repeal of the LFAIE does not lead to a sharp increase in demand for second homes or holiday homes in the tourist areas, the proposed solution was to oblige the cantons to regulate the construction thereof by means of their master plans.

However, the Swiss Parliament refused to repeal this law on March 11 this year. It considered in particular that the envisaged accompanying measures were not strict enough to prevent property speculation and the problem of "cold beds". The fears of the different players involved are mainly apprehension that foreign speculators may take control of the market and fear of increased property speculation.

The Swiss government will therefore have to review its position; in particular, it is envisaged to introduce a minimum duration of residence in Switzerland as a condition for the purchase of a second home. The status quo therefore currently remains in place.

In conclusion even though one sometimes has to be very patient in order to purchase a holiday home in some popular tourist localities, **it is still perfectly possible for Foreigners to purchase real estate** and the assistance of attorneys-at-law or notaries public will enable you to overcome the final obstacles on the road to owning property in Switzerland.

The quotas indicated in this article correspond to those granted for the year 2008.

N.B. The content of the present article is intended to be purely general in scope and each particular case has to be analysed on its specific merits. ■

SUMMARY FOR THE PURCHASE OF HOLIDAY HOMES :

- Maximum surface area of the plot: 1000 sq. metres
- Maximum floor surface area: 200 sq. metres
- The dwelling must be located in a tourist locality
- The Foreigner must obtain an authorization prior to the purchase

Canton	Number of tourist localities
Valais	117
Berne	52
Neuchâtel	50
Vaud	26
Fribourg	20
Jura	18

Canton	Annual quotas 2008
Valais	330
Berne	140
Neuchâtel	35
Vaud	175
Fribourg	50
Jura	20