



H A A B L E G A L

STUDIO LEGALE E NOTARILE – ANWALTSKANZLEI UND NOTARIAT

Federal Act of 16 December 1983 on the Acquisition of Im-movable Property in Switzerland by Foreign Non-Residents (ANRA)

Avv. Hugo Haab, January 2023

PURPOSE OF ANRA:

- Restrict the purchase of real estates in Switzerland by foreign non-residents.

FOREIGN NON-RESIDENTS:

- Foreigners (EC/EFTA or not) without domicile in Switzerland (i.e. with domicile abroad)
- Foreigners domiciled in Switzerland but who (1) are not EC/EFTA citizens and (2) do not hold a valid C permit
- Persons who per se are not subject to ANRA but who purchase the property on behalf of a person abroad (e.g. trustee)

THEY ARE NOT FOREIGN NON-RESIDENTS (therefore not subject to ANRA):

- Swiss
- EC/EFTA foreigners with domicile in CH (e.g., with a B + C + L permit) [→ circumstance which however must also be proven with other evidence: e.g. employment contract, domicile certificate, notification of departure from abroad, taxes, health insurance, schooling of children, etc.].
- Non-EC/EFTA foreigners with C permit [→ circumstance which, however, must also be proven with other evidence: employment contract, domicile certificate, notification of departure from abroad, taxes, health insurance, schooling of children, etc.]

FOREIGN COMPANIES

- Companies with seat outside Switzerland
- Companies headquartered in Switzerland but dominated by individual foreign non-resident(s) (see definition according to Art. 6 ANRA)
- Companies which per se are not subject to ANRA but which acquire the property on behalf of a person abroad (e.g. trustee)

PURCHASE OF REAL ESTATE:

- Purchase of property, right of superficies, right of habitation or usufruct
- Purchase of shares of legal entity (e.g. company) whose actual purpose is the purchase of real estate
- Participation in companies without legal personality but with capital capacity whose actual purpose is the acquisition of properties
- Establishment and exercise of a right of purchase, pre-emption or reclamation over a property
- Acquisition of other rights that procure a position similar to that of a landowner

EXCEPTIONS FOR FOREIGN NON-RESIDENTS:

- **Primary residence (dwelling):**
 - o As an EC/EFTA individual domiciled in Switzerland (thus already in possession of a valid permit) is not subject to the ANRA (see above) the primary residence's provisions apply only to non-EC/EFTA individuals
 - o Foreign non-residents (non-EC/EFTA) does not need ANRA permit to purchase their principal residence in the place where they have legal and actual domicile (→ individual must already hold a permit (B))
 - o Provided they buy directly and in their own name and property area less than 3,000 sq. m. (if more, it is necessary to go through the ANRA authority) and there is no prohibited capital placement
 - o Primary residence must be personally used (→ no rental)
 - o *Quid for foreign non-resident who is not (yet) domiciled in Switzerland (thus without a residence permit) and wants to move to Switzerland? In such a case he has two options:*
 - Establish temporary primary residence (with a lease agreement) and then apply for residence permit and after that purchase the property
 - Apply for permit for secondary residence subject to conditions, to be revoked as soon as in possession of permit
- **Secondary residence (dwelling):**
 - Only frontier worker (with permit G) can buy without permission in the place where he/she works. He/she cannot rent the dwelling to third parties.
- **Land property for business establishments:**
 - If used for economic purposes (factory, warehouse, office, hotel, restaurant, medical office, etc.) do not need permission, as long as land property is not more than necessary for the purpose of use
 - There is no economic purpose, hence business establishment (not subject to permit) in case of building, renting or trading of living space. In such a case, ANRA authorization would be required, which, however, cannot be granted since there is no reason for authorization (except for social housing)

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- It is possible to purchase housing together with a business establishment if the housing is necessary for the operation of the business
 - Undeveloped land in building zone:
 - ANRA permit required unless land is developed within 1 year with building for which no permit is required
 - Other exceptions under Art. 7 and 7a ANRA (heirs, relatives, co-owners, etc.).

ASCERTAINMENT OF PERMIT REQUIREMENT

- If it cannot be ruled out that legal contract / purpose of the business is subject to ANRA it is mandatory to apply to the ANRA first instance authority to ask:
 - Permit issuance, or
 - Determination that this permit is not necessary
- ANRA authorization is issued only for the reasons foreseen by ANRA and by the cantonal law. Authority can issue authorization with charges / conditions. Authorization lapses if purchase not made within 3 years. Reasons for authorization see art. 8 ANRA.
 - 1st Example (frequent case): **instituted heir or legatee** who is not a legitimate heir (who enjoys the exception to the permission requirement), obtains permission but often with the burden of reselling the estate within 2 years.
 - 2nd Example (frequent case): **holiday residence** and unit at **aparthotels**, if in a tourist place (defined by the canton). The permit should be counted to the existing quota.
 - 3rd Example (frequent case): purchase of **secondary residence** by foreign non-resident (EC/EFTA or not) with domicile abroad (thus without residence permit) possible only in a place with which he/she maintains very close relations worthy of protection (Art. 9 para. 1 letter c ANRA), such as economic, scientific or cultural relations. Thus to buy a secondary residence a foreign non-resident (EC/EFTA and non-EFTA) must proceed as follows:
 - 1) Apply for residence permit (permit C for non-EC/EFTA individuals) and then purchase secondary residence without limitation (since this is not subject to ANRA limitations)
 - 2) Apply for a permit under Article 9 LAFE (see above), thereby fulfilling its restrictive conditions
 - 3) Take into consideration the legislation limiting the number of secondary residences