

**Is there a less expensive way for purchasers to get some degree of assurance?**

"In the first instance the potential buyer should get a preliminary survey carried out regarding the status of the property concerned. Consider, for example, finding out who the legal owner(s) is (are), whether the plot has the correct designation, whether there are debts or mortgages outstanding on the property, whether a building and residence permit can be obtained, etc. In the event that the dwelling still needs to be constructed or is still under construction, people should ensure that they obtain the required guarantees. The payment terms for an existing dwelling are actually quite different from those for one that is not yet completely finished. In the case of an unfinished dwelling it's important to obtain guarantees in return for the deposits. The guarantees can take the form of, for example, a mortgage, bank guarantee or bond. These forms of guarantee have advantages and disadvantages for both parties. In the event that the construction has not yet begun, I advise the purchaser at least to buy a property from a project where the cadastral division has already taken place and has been recorded as such at the land registry. Without such cadastral division (*kat irtifaki*), the formal process of purchasing cannot begin for the dwelling concerned."

**Foreigners who buy a house in Turkey often have queries about inheritance law. Would you tell us a little more about that?**

Turkish inheritance law is not much different to the Netherlands Inheritance Law. According to the Turkish private international law (article 22) regarding inheritance rights, the nationality of the individual concerned is the governing factor, except where property is concerned. This means that for the cadastral process relating to the conveyance of title to property located in Turkey, Turkish law applies. Furthermore, according to Turkish private international law, wills made abroad are valid in Turkey. However, in the first instance the will should be certified by the Turkish Court of Law. Wills that relate to property situated in Turkey can also be drawn up by a Turkish notary. Should a will be required, I can provide advice and guidance for this too."

**Would you be able to tell us a little more about Owners' Associations in Turkey and anything in particular that those concerned should be careful of?**

"An Owners' Association contract is a document that is legally required during the process of obtaining the deed of division (*kat irtifaki*) or the first title deed (*kat mulkiyeti*). The owners' association is comprised of the owners of all independent dwellings in the residential complex or apartment block. Without the registration of this document at the land registry you can't get hold of title deeds. Very many buyers are not aware of the existence of this document. Every apartment or residential complex has a contract for the Owners' Association lodged at the land registry. Because new buyers often aren't aware of the existence of this document, they want to draw up their own written rules and have these registered at the notary so the complex can be managed. Therefore this is invalid. People can, however, amend the existing registered contract, but require a 4/5 majority to do this. The contract can best be described as a management plan, within which rules can be established for the use of communal areas, privately owned areas, management, general expenses, owners' rights and obligations, etc. Such rules shouldn't conflict with mandatory legislation. I always advise new purchasers to have the current contract translated and to read this through properly.

In it, people can read, for example, about whether pets are allowed, how general expenses are calculated, when the meetings take place, etc. Whilst much mandatory legislation relating to building complexes is not included in the contract, owners should familiarise themselves with this too. I ensure that owners' association meetings take place in an appropriate manner. In connection with owners' requirements, I draw up suitable contracts for the owners' association."

**Have you got any final advice to close with?**  
 "A Dutch saying goes that *prevention is better than cure*. I totally agree with that. If a problem arises at the outset, it is often difficult to correct this later on. So make sure you are well informed and if needs be use expert help in purchasing your property in Turkey." 🇳🇱

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## 'If a problem arises at the outset, it is often difficult to correct this later on. So make sure you're well informed from the start'

Purchasing a (second) home in Turkey is, of course, cause for celebration. But the festivities can be short-lived if you don't tread carefully from the outset, according to Mrs. S. Kroon-Özyurt (LL.M.). She completed a law degree in Turkey and therefore knows the law like the back of her hand. Since 2002 she has been guiding and advising foreigners who want to buy a house in Turkey - as well as those who have already done it - with all the associated formalities. 'Most problems arise with the sentences: 'I've got some contacts. No problem. We'll sort everything out for you. Subsequently, on the basis of this promise, they end up paying for a piece of land, upon which building is not permitted, or a house that subsequently cannot be registered in the owner's name. According to new legislation of January 7<sup>th</sup> 2006 foreigners can only purchase property in areas with a valid development plan. And that seems to be neglected once in a while.'



### **You grew up in Turkey and now have a consultancy in the Netherlands. How did that all come about?**

"I grew up in Izmir, which is also where I completed my law degree and got my work experience. In the course of my studies I met my Dutch husband. That's why I went to the Netherlands in 1998. I started work there at the Turkish Embassy in The Hague. After that I worked as a lawyer for an international Telecoms company and at the same time started up my own consultancy. In 2002, I decided to go full-time with my consultancy, Kroon-Özyurt."

### **Your main line of business is advising foreign investors in the purchase of property and doing business in Turkey, isn't it?**

"That's right. When I worked at the Turkish embassy I realised that there were lots of foreigners who needed legal advice when it came to doing business in or with Turkey. Over the last few years the need has grown, due to the increase in investment in trade and property in Turkey.

Although Turkish law is based on European regulations, unfamiliarity with Turkish culture, language and the legal system always present an obstacle to the foreign investor. Many of them are misled by unprofessional business partners or so-called advisors who don't have the relevant qualifications. These people occasionally involved Dutch lawyers, even though they weren't proficient in Turkish law. According to private international law, the legislation that applies is that of the country where the official headquarters or property is already situated. These people actually need a lawyer who had read Turkish law. It's from this premise that I started up my consultancy in 2000. In doing this, I work in close conjunction with my colleagues in Turkey. We try and inform our clients about the opportunities and pitfalls facing people if they invest or do business in Turkey."

### **What is it that makes Turkish legislation so tricky for foreigners?**

"As I previously commented, Turkish legislation is based



upon European regulations. But despite the agreements, each European country's legal system differs in certain aspects from that of other countries. On the same note, there are differences with the Turkish legal system. For example, in Turkey conveyance of title can only take place at the land registry and not, for example, as is usual practice in the Netherlands, at the notary. It appears that potential foreign buyers, on the advice of an intermediary, go to a Turkish notary. There the buyer is only given official authorisation for the intermediary for the purchase of the dwelling. The buyer thinks that he has the title deeds, whereas he only actually has an authorisation.

I know lots of people who believe that doing business in Turkey is very different to how it goes in their own country and that putting things in writing is not part of Turkish business culture. This opinion is completely wrong. Of course it's in your interest to allow everything to proceed officially and adhere to all the necessary formalities. In the first instance, my job is to provide the buyer with clarity about the purchase process in Turkey. This is very different for foreigners compared with Turkish people living in Turkey. So if you rely on the help of a good Turkish acquaintance the end result can be disappointing. Most problems arise with the sentences: 'I've got some contacts. No problem. We can sort everything out for you. Subsequently, on the basis of this promise, you end up paying a piece of land, or putting it on the name of the Turkish acquaintance. After which you find out building is not permitted on that particular piece. Or you end up paying for a house that subsequently cannot be registered in your name.'

**Are those the problems you most frequently come across from day to day?**

"Sure. Since January 2006 foreigners can only purchase property in areas that have a valid development plan (*mevzii imar plani, uygulama imar plani*). But if they establish a Turkish company, a limited, they can, like Turkish citizens, also purchase other pieces of land. That's why at this moment many foreign investors payed for ground that doesn't have a valid development plan. Perhaps they were misled by an intermediary or it simply didn't occur to them. At the moment lots of foreign investors, with a Turkish company, who own

land designated for olive trees, fig trees, woodland, etcetera. Other problems that foreigners come across are contractors who don't fulfil their obligations with regards to the building work, buyers who, while they satisfy their payment obligations, don't obtain title deeds in their name, and buyers who pay deposits without being legally assured that they can get it back."

**I read in your business profile that you also ensure the validity of contracts between real estate agents/project developers on the one hand and buyers on the other. Does that mean that contracts of sale, which are generally signed at the real estate agent's/project developer's offices, are invalid, then?**

"No. Such contracts don't provide any right whatsoever to ownership. They can only be used as evidence in a possible lawsuit to claim the money back. The official sale and conveyance of property can only take place at the land registry. The only document for a future conveyance of property that can be arranged at the solicitor's office is an agreement in which the promise to sell is registered (*gayrimenkül satış vaadi*).

In the event that conveyance of title cannot happen immediately, the purchaser needs a guarantee. The property owner can make a promise for the conveyance of title, the promise of sale, by having a notarial deed drawn up. The deed is subsequently deposited at the public register, i.e. the land registry. Such registrations are valid for five years. In the event that the cadastral registration is not complied with, the land can be sold in the meantime to a third party. Using this particular deed, the purchaser has the right, through a court of law, to have the property concerned registered in his name, without the seller's permission (providing that the conditions contained therein are satisfied). In Turkey, this notarial procedure for legal protection is expensive, as it is in the Netherlands. And that's not the only drawback of the procedure. Should the purchaser be a foreign national, a permit should be obtained for the registration of the agreement at the land registry. As a matter of fact, foreign purchasers have to go through a military permit procedure, before being able to have the agreement registered at the land registry.