

A BRIEF GUIDE TO PROPERTY TRANSFERS IN SOUTH AFRICA

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1. WHAT IS CONVEYANCING?

Conveyancing is the legal process whereby ownership in immovable property is transferred from one party to another and related aspects such as the registration of mortgage bonds and real rights in respect of immovable property. Immovable property is any land (whether improved or not) such as a dwelling house, a farm, a vacant erf or a sectional title unit. A conveyancing transaction involves a number of steps which normally begins with a Deed of Sale and continues through to the registration of transfer of ownership or the registration of the mortgage bond in the Deeds Office, the reconciliation of finances and the ultimate payment of the purchase price to the Seller.

2. WHAT IS A CONVEYANCER?

A conveyancer is an attorney with a post-graduate qualification who by law is the only person who can register property transactions in the Deeds Offices. This is necessary to ensure the protection of the interest of the parties to the transaction and to maintain the high standard of land registrations.

3. THE SALE OF IMMOVABLE PROPERTY: STEP BY STEP

3.1 Agreement of sale – a written agreement in which the Purchaser, the Seller and the immovable property as well as the purchase price is specified, is essential to constitute a binding agreement of sale. A Deed of Sale must be signed by both the Purchaser and the Seller or a person who has been authorized by such party in terms of a written Power of Attorney. A verbal contract for the sale of immovable property is unenforceable.

3.2 Transfer of the property – On receipt of the Agreement of Sale the conveyancer takes the necessary steps to effect registration of transfer of the immovable property in the relevant Deeds Office. Both the Purchaser and the Seller will be required to call at the offices of the Conveyancer to sign the necessary transfer documents which have been prepared by the Conveyancer and which will enable him to effect transfer. The Conveyancer requires the following:-

A From the Seller:-

- A Power of Attorney to pass transfer;
- Declaration in respect of marital & solvency status;
- Particulars of Bond Holder; • Valid electrical wiring certificate;
- VAT declaration (if applicable).

B From the Purchaser:-

- Declaration in respect of marital & solvency status;
- Particulars concerning the identity of the Attorney transferring the Purchaser's property if the Purchaser is utilizing the proceeds to pay for his purchase;
- Particulars of the bond granted;
- Transfer duty and / or VAT declaration (if applicable).

C From the existing Bondholder:-

- Cancellation figures and Title Deed;
- Particulars of 2nd or further bond holders;
- Identity of attorneys attending to the bond cancellation.

D From the Purchaser's transferring attorney in the event of a subject to offer:-

- Confirmation that the transaction is proceeding;
- Particulars of estimated amount available;
- Feasibility of linking matters in the Deeds Office for simultaneous registration.

E From the Estate Agent:-

- Confirmation of payment of the deposit, the bond grant and relevant information.

3.3 Upon receipt of the documents referred to in A – E:-

- Transfer and/or bond documents are drawn;
- Accounts prepared for both seller and purchaser;
- Both Seller and Purchaser telephoned to arrange appointment for signature;
- The Purchaser is requested to pay the balance of the purchase price, costs and disbursements;
- Guarantees are requested from the Bond Attorneys.

3.4 After signature of documents by both Seller and Purchaser and payment of disbursements by Purchaser:-

- Obtain transfer duty receipt; • Obtain rates clearance certificate.

3.5 After receipt of guarantees:-

- Forward guarantees plus payment of bond cancellation costs to the existing bondholder's attorneys.

3.6 After receipt of clearance certificate and transfer duty receipt:-

- Liaise with the relevant parties to arrange lodgement.

3.7 Transfer is effected in the Deeds Office.

3.8 After Registration:-

- Advise all parties of registration;
- Present guarantees for payment;
- Obtain payment of balance of deposit (if applicable)
- Do final account;
- Request refund of overpayment (if any) from local authority and bond holder.

3.9 Upon receipt of payment i.t.o. guarantee presented:-

- Finalize the accounts of the Seller and Purchaser;
- Arrange for parties to collect payment;
- Request refund of overpayment of rates, etc.

3.10 Upon receipt of documents from Deeds Office:-

- Forward Title Deeds to bondholders for safekeeping, or if no bond, arrange with Purchaser to collect documents.

4 COSTS INVOLVED:-

The costs relating to the transfer of fixed property fall into the following categories:-

- Transfer Fees;
- Bond fees;
- Transfer duty or VAT;
- Rates and Levies;
- Deeds Office levy;
- Stamp duty on bond.

5 HOW LONG DOES THE PROCESS TAKE?

The period of time it takes to lodge a transaction in the Deeds Office depends on the co-operation of the parties and their contractual arrangements. After the documents are

completed and the rates and taxes on the transfer duty paid, the documents are lodged at the Deeds Office. The usual time taken by the Deeds Office to examine the documents lodged by the different conveyancers for a specific transaction is 7 – 14 days.

6 NECESSITY OF A CONVEYANCER

In terms of the present legislation, only qualified conveyancers may attend to the transfer of fixed properties and related transactions. This protects the rights and interest of the public and also safeguards the integrity of the South African Land Registration System, which is universally regarded as one of the best in the world. Only an attorney can qualify as a conveyancer.