

STEP BY STEP GUIDE TO THE CONVEYANCING PROCESS

Introduction

In terms of the requirements of the Alienation of Land Act, 68 of 1981, an agreement to transfer immovable property must be reduced to writing and needs to contain certain prescribed information.

Upon signature of an offer to purchase by the purchaser and then acceptance of the offer by the seller an estate agent or the seller will forward the offer to purchase to a conveyancing attorney. It is the seller's right to nominate and appoint a conveyancer to attend to the transfer of the immovable property.

Conveyancers are specialist attorneys and as such we are the only attorneys entitled to effect the transfer of property in the deeds office.

Once the seller has appointed a conveyancing attorney it is the conveyancer, known as the transferring attorney, who will attend to the transfer of the property and who will keep all parties informed as to the progress of the matter.

In any transfer there may be as many as three, and in some instances more, conveyancing attorneys appointed to effect all the acts of registration, for example transfer, bond registration and bond cancellation.

There will therefore be a transferring attorney, a bond registration attorney appointed by the bank who has granted the purchaser a bond (if required) and in the event that the seller has a bond over the property the seller's bank will appoint a bond cancellation attorney to cancel the seller's bond.

It is the transferring attorney who will regulate the transfer process and ensure that the bond registration attorney and bond cancellation attorney furnish their documents timeously.

Bond Cancellation:

One of the first tasks of the transferring attorney is to notify the seller's bank, should the seller have a bond over the property, that the seller wishes to cancel the bond and that the seller will be transferring the property. The seller's bank will in turn appoint a bond cancellation attorney and furnish this attorney with 'cancellation figures' and will forward the original deeds to them.

In order to commence this process the seller will be called upon to furnish his bond account number.

The cancellation figures are made up of the amount outstanding on the bond on the date the figures are requested as well as a forward interest projection and a 'penalty interest' amongst other things. The bond is only cancelled on the day the property is transferred from the seller's name in the deeds office and this is why the bank provides for a forward interest calculation.

Most banks require their clients to provide three month's notice upfront of their intention to cancel their bonds. Should the client fail to provide this notice the bank will charge them 'penalty interest.' The penalty is charged pro rata for every day's notice which is not given and is recalculated by the respective bank on registration of transfer.

It is for this reason that the transferring attorney provides notice to the seller's bank as soon as possible in order to avoid any unnecessary penalty interest being charged. Most transfers take approximately three months and therefore in most instances the seller does not incur the expense of penalty interest.

It is important to note that in the event that the seller has an 'access bond' this facility will be 'frozen' once notice is given to the bank that the bond will be cancelled.

Rates Clearance figures:

One of the documents which the deeds office requires prior to registering the transfer is a certificate from the applicable municipal council that the seller is up to date with his payment of the rates, taxes, electricity, sewer etc for the property.

The transferring attorney will make application to the council for rates clearance figures. In issuing the rates clearance figures the council requests an advance payment of usually four months for the aforementioned services. The seller is liable for the payment of this in advance, and once paid to the transferring attorney the seller should not pay for any further services to the council directly.

Upon registration the transferring attorney will notify the council that the seller is no longer the owner of the property and will also furnish the seller with copies of the documents the council will need in order to refund the seller. The seller will need to attend at the council to ensure his application for the refund is processed. The purchaser will also need to attend at the council on registration to arrange for a new rates account to be opened in his name. Purchaser will be liable for rates and taxes from the date of transfer, and the seller will be due a refund of amounts paid for the period from the date of transfer to the end of the rates clearance period. The transferring attorney will not be actively involved in this process.

Purchaser Bond grant:

In the event that the offer to purchase is dependent on the purchaser obtaining a bond the purchaser may either approach the banks directly for a bond grant or ask a mortgage originator to assist them in applying to all the relevant banks for the same. The purchaser will need to act promptly in applying for a bond as the offer to purchase will specify that the bond will need to be granted within a certain time period and in turn guarantees will need to be issued by a certain date.

Upon the purchaser being granted a bond the relevant bank will instruct a bond registration attorney to attend to the registration of the bond in the deeds office.

The transferring attorney and the bond attorney will at this stage be in contact with each other. Once the transferring attorney has furnished the bond attorney with a draft deed and guarantee requirements, provided to the transferring attorney by the bond cancellation attorney, the bond attorney will be in a position to draft their bond documents.

The purchaser will be required to sign the bond documents with the bond attorney and will be liable for the payment of the conveyancing costs associated with the registration of the bond.

Once the bond documents have been signed the bond attorney will be in a position to furnish the guarantees for the purchase price to the transferring attorneys.

Transfer documents:

The transfer documents can only be drafted once the seller and purchaser have supplied the necessary "FICA" to the transferring attorneys. The transferring attorneys will provide a list of documentation required to each party concerned. The bond cancellation attorney will also assist in the drafting process by providing a copy of the existing deed and bond cancellation figures to the transferring attorneys.

Once the transfer documents have been drafted and both parties have signed the same the transferring attorney will request the purchaser to pay the transfer costs. The transfer costs are made up of the conveyancer's fees, disbursements such as postages and petties and deeds office charges as well as transfer duty or VAT (dependent on the VAT status of the seller.)

Transfer duty Receipt:

The transfer duty is paid by the conveyancer to SARS together with the submission of SARS documents, which the parties have signed, in order to obtain a transfer duty receipt. It is a deeds office requirement that a transfer duty receipt be lodged together with the balance of the transfer documents in order to effect transfer.

The Receiver of Revenue exercises a discretion in issuing the transfer duty receipt and should one or both of the parties have unresolved tax issues the Receiver may request that these be resolved before they will issue a receipt.

Transfer process:

Upon receipt of the rates clearance certificate from the relevant local authority, the transfer duty receipt from SARS, signature of the transfer documents by both the seller and the purchaser, receipt of the balance of purchase price from the purchaser or the guarantees from the bond attorneys and any applicable clearances from Home Owners Associations or Sectional Title Managing agents the transferring attorneys will contact the bond registration and bond cancellation attorneys to arrange for lodgement in the deeds office.

As stated above the transferring attorneys regulate the transfer process and it is therefore their duty to arrange that all the parties send their documents to the deeds office for simultaneous lodgement.

All the documents are linked together by the deeds office on lodgement and they will then be examined as a batch by the deeds office examiners. Should the documents all be in order the deeds office will bring them up on "prep." (Prep is known as "fees" in some deeds offices.) The attorneys will then have an opportunity to re-check their files and ensure everything is in order before the conveyancer 'executes' the deeds in front of the registrar of deeds at the deeds office for registration.

Payment:

Once registration has occurred the bond attorney will instruct the banking institution that has provided the finance to the purchaser to pay out this finance in accordance with the guarantees that have been issued.

The transferring attorneys will apportion the purchase price and draw final accounts to account to both the purchaser and the seller. The purchase price will be apportioned to cancel any existing bonds the seller may have had over the property and the transferring attorney will pay the estate agent's commission (if an agent was the effective cause of the sale). The remaining portion of the purchase price will be transferred to an account nominated by the seller.

Deeds:

Approximately four months after registration of the transfer the deeds office will release the registered deeds to the relevant attorneys.

Should the purchaser have bonded the property the mortgage bond and title deed will be forwarded to the purchaser's bank for safe keeping.

In the event that the purchaser bought the property "cash" the transferring attorney will make contact with the purchaser and arrange that the purchaser collect the title deed from the transferring attorney.

Should either the bank or the purchaser misplace the original deed there is no need for concern as a duplicate deed can be obtained from the deeds office at nominal cost.

Costs:

The law societies of South Africa have issued guidelines to the conveyancing fraternity indicating what they feel would be acceptable charges for attending to the acts of registration in the deeds office. Although a conveyancer is not bound to follow the guideline, most conveyancers do. A copy of this guideline can be found on the law society's website (www.lsnp.org.za).