

THE CONVEYANCING PROCESS

This guide has been developed by Sibran & Sibran Attorneys to enable you to understand the Conveyancing process and give you a basic understanding of the transactions and processes involved regarding the property you have just bought or sold.

Enjoy and remember that we will always be at hand to answer all your queries. We will keep you updated as the process moves along.



How the process begins:

The entire property transaction starts with a purchase and sale agreement. This agreement contains all the terms and conditions of sale and all the obligations between the Purchaser and Seller. Once the purchase and sale agreement is signed, two basic obligations exist. Firstly the Purchaser needs to obtain the purchase price and secondly the Seller needs to effect the transfer of the property to the Purchaser. This is the most basic understanding of the property transaction. The Conveyancer takes charge of the entire transaction from there on.

What is Conveyancing?

The process of transferring the ownership from the Seller to the Purchaser is called Conveyancing. Conveyancing is a specialised area in law. Conveyancers are admitted attorneys who write a further specialized examination and thereafter are admitted to the role of Conveyancers. The Conveyancer controls the entire property transfer process and ensures that the transfer process is effected, as agreed upon between the Purchaser and Seller, and is the only person authorized in law to effect a transfer of any property within the Republic of South Africa.

The Conveyancing process begins:

The Conveyancer will study the sale agreement and thereafter effect its contents. For a property to change ownership various preliminary factors need to be addressed.

Is there an existing Mortgage Bond registered over the property?

If there is an existing bond over the property being transferred, it will have to be cancelled. The holder of the bond (bank) will send the Conveyancer the amount outstanding to cancel that bond. The holder of the existing bond (bank) will instruct a bond cancellation attorney to effect the cancellation of the bond. The Seller will be responsible for these amounts as well as the bond cancellation fee. This is for the cost of the Seller, and his/her bank will advise of the charges related thereto as well as the attorney who will be attending to the cancelling of that bond

Is there going to be a new Mortgage Bond registered over the property?

Should the Purchaser apply for finance in order to cover the purchase price or part thereof, a new bond will have to be registered against the property. This new bond will be registered with the transfer. This is for the cost of the Purchaser, and his/her bank will advise of the charges related thereto as well as the attorney who will be attending to the registration of that bond.

Levies

As with rates and taxes, levy payments are to be made by the registered owner of the property. From date of registration of transfer into the new owners' name this liability shall pass accordingly. The amounts owing will be advised by the body corporate or their managing agent, and will have to be paid immediately to avoid delays. The Purchaser shall reimburse to the Seller any amounts paid in advance that fall after the date of registration of the transfer.

Rates and taxes:

All rates and taxes and municipal bills owing is for the account of the registered owner of the property. The Seller being the registered owner will be responsible for payments of the clearance figures which are issued by the local municipality. These are paid in advance. From the date of the registration of the transfer into the new owner's name, all liability for rates, taxes and municipal bills shall pass to the new owner. The Purchaser shall thus reimburse the Seller for any amounts paid in advance that fall after the date of registration of the transfer. The amounts owing in order to get a clearance certificate will be advised by the municipality and will have to be paid immediately to avoid delays.

Transfer duty and/or VAT:

Over and above the purchase price, transfer duty is payable to the South African Revenue Services. This is directly related to the purchase price or property value. Transfer duty is payable by the Purchaser according to a tariff set by the South African Revenue Services. In certain circumstances VAT will be payable and not transfer duty. If VAT is payable then is it the Seller who is responsible for such payment to the South African Revenue Services. Either transfer duty or VAT will be always payable in any property transfer. These amounts in certain circumstances may be zero/nil. You will be advised accordingly.

FICA

Compliance with the Financial Intelligence Centre Act is mandatory. Your identity document, proof of residence and tax numbers are needed.

Any conditions relating to the property

When a property is purchased, any conditions relating to the property must be dealt with. It is your duty to ensure that you are familiar with any conditions relating to the property you are buying or selling before signing the sale agreement. This is an intricate area in the process and will be dealt with by the Conveyancer. Additional work will be billed accordingly and will be for the account of the Purchaser.

Exclusive use areas

In all sectional title transfers, the property is sold together with an undivided share in the common property which is allocated according to the size of the unit in relation to the entire development. In certain instances there are exclusive use areas which do not form part of the common property and is for the exclusive use of the owner thereof. Examples of this are designated garden areas or parking spaces. Remember that a parking space may be designated by the body corporate and is not necessarily an exclusive use area. Exclusive use areas can only be transferred to the new owner by a notarial cession of that exclusive use area. This can only be done by a notary public and is an additional cost for the Purchaser's account if necessary.

Compliance certificates

The Seller needs to furnish an electrical compliance certificate and a gas compliance certificate (if gas is used). The banks normally require an entomology report which clears the premises of pests.

Drafting of the Title Deed / Deed of Transfer

This is the centre of the entire transaction. The Conveyancer attends to the drafting of the title deed.

Lodgement

Once all aspects have been covered, the transfer is lodged at the Deeds Registry. The Conveyancer and all other attorneys involved make arrangements to ensure that this is done like clockwork. The Deeds Registry will scrutinise the documents to ensure that all obligations are met and in accordance with the law.

Registration of transfer

This is the culmination of all the work done. The transfer is registered. The new title deed will in course be delivered to the Conveyancer who will in turn deliver it to the new owner. Should a bond be registered over the property, the original title deed will be sent to the bond registration attorney and a copy sent to the new owner.

Payment of funds and delivering of guarantees

Once the property transfer is registered, all guarantees are paid and the proceeds of the sale allocated accordingly. The transaction is now complete.

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Frequently encountered terms

Title Deed / Deed of transfer

Every property has a title deed. It will be sufficient for you to know that it reflects ownership and will be the central focus of the transfer. Without it you have no ownership. If you have lost your original title deed, do not worry as we will apply for a copy. Should you have a bond on the property, the original title deed is most likely filed at the head office of a banking institution.

Power of attorney

This is a legal document prepared by the Conveyancer which is to be signed by the Seller.

The Deeds registry

The deeds registry registers all transfer of ownership and is a central filing office for title deeds. The Deeds registry for KZN is based in Pietermaritzburg

Pro forma account

The Purchaser shall be liable for the transfer fees and disbursements. A pro forma account will be sent to the Purchaser and is an estimation of the costs involved in the Conveyancing transaction. This account needs to be paid immediately to avoid delays.

Final account

The final account is done at the end of the transaction which is a final accounting of the fees payable. The final account is usually done before lodgement, but it can be done after lodgement to ensure that no delays are incurred. Should additional amounts be incurred they shall be reflected on the final account.

Sellers account

This is done at the end of the transaction and is an accounting of the proceeds of the sale and the amount payable to the Seller on registration of the transfer.

Mortgage bond

This is commonly known as a home loan. A mortgage bond is the document that is registered at the deeds registry to formalize the home loan and the terms and conditions on which it was granted.

Notary public

An admitted attorney who has written a further specialized exam and admitted on the role of notaries. They are specialists the area of authentication and are the only professionals in law that can effect certain documents or transactions.

