

Thank you to everyone, for your support and feedback.

Due to numerous requests dealing with transfer times, we have visited the topic in order to bring understanding to the 4 week registration of transfer and the ones that take much longer.

In this issue, we also look at the “cooling off periods” that apply.

Enjoy and remember to submit your topics of interest, for future issues, as well as private queries. For any clarity on the topics that are covered, drop us an email and we will get back to you.

Regards

Sibran & Sibran

CONVEYANCING TIME PERIODS EXPLAINED

The time periods involved in any property transfer is of utmost importance and interest to all parties concerned. Interest payments, rates, levies, municipal accounts and maintenance costs continue to be incurred until those obligations are transferred to a new owner.

It’s a question that is posed by every client, and the answer is dependent on a number of factors.

To understand how long any transfer should take, one has to firstly look at the type of transaction that is being dealt with and secondly, the number of parties to the transaction.

We break up transactions into 4 categories:

1. Cash sale of a freehold property
2. Sale of a freehold property using bank finance
3. Cash sale of a property which is encumbered by a mortgage bond
4. Sale of a property which is encumbered by a mortgage bond using bank finance

The cash sale of a freehold property:

This transfer requires no other attorney firm to be involved in the transaction, with the transferring attorney solely attending to the transfer, from beginning to end. Rates clearances figures are obtained on average within 5 to 10 working days, and once paid, a further 5 days to issue a rates clearance certificate. These time periods fluctuate depending on the workload of the municipality, the speed of the handler who is attending to the matter on behalf of the municipality, as well as the status of the municipal server.

The cash sale transaction can therefore be lodged upon receipt of the rates clearance certificate, which is between 3 to 4 weeks of receiving the instruction. All other aspects of the transfer can be completed within this time period.

Sale of a freehold property using bank finance:

When a home loan is used to finance the purchase price or balance of the purchase price, a further attorney is involved in the transaction, who will attend to the registration of a first mortgage bond over the property. The

transfer speed in this case is dependent on when the bond registration attorney delivers the required guarantees to the transferring attorney. Only once guarantees are received can the purchase price be deemed to be secured.

When a bond is to be registered, the non-payment of the bond registration attorney's fee could see delays in the delivery of the guarantee. It is thus very important to ensure that Purchasers are aware of their fee obligation, as well as attendance to signature of their documents.

Cash sale of a property which is encumbered by a mortgage bond

When a bond exists on the property that is being transferred, a further attorney is involved in the process, who will attend to the cancellation of the bond. Normally this will not affect transfer speeds, unless there is a delay in obtaining the original Title Deed.

It is important to note that only once the client complies with FICA, signs their refund form, and attends to the payment of the bond cancellation attorneys fee, will a "proceed" be obtained from the bank. The "proceed" is an instruction from the bank to literally proceed with the lodgement and cancellation of the existing bond.

A further important aspect is that the purchase price must be paid in full to enable the registration attorney to issue a "guarantee" to the cancellation attorney.

Sale of a property which is encumbered by a mortgage bond using bank finance

This type of transfer requires 3 attorneys to simultaneously deal with the transfer, namely a transferring attorney, a bond registration attorney, and a bond cancellation attorney.

Transfer speeds are entirely dependent on all parties ensuring that their files are ready for lodgement, and the aspects covered above relate.

For every new party involved in the transaction, the time period to get to lodgement is increased. These parties need to get their files in order and various original documents need to be exchanged. Failures by any party to attend to their responsibilities do hamper transfer speed, purely because each additional party to the transaction needs to deliver certain documents and attend to the lodgement of their documents. Only once all parties are ready, can the transfer be lodged.

Once lodged, the deeds office may take 5 to 7 working days to inspect the transfer documents, and a further 2 days to register the transfer.

Other factors that delay transfers:

Outstanding fees

The most common reason for delays is the failure of Purchasers to pay their required transfer fees and bond registration fees, as well as Sellers failing to pay their bond cancellation fee on time. Only when fees are paid in full or arrangements made for payment thereof, can the transfer be lodged.

Rates payments

A rates clearance certificate is mandatory. This certificate may only be issued upon receipt of the municipality of full payment of its clearance figures. Any delay by the Seller to make payment of these amounts, have a resultant effect of delaying the acquisition of the rates clearance certificate which results in a delay of transfer.

Transfer duty

Should any party to the transaction fail to furnish their tax numbers, or any other required information, then a transfer duty receipt cannot be obtained. This is amplified when the parties have not met their tax obligations. SARS has strict requirements that need to be followed. In addition to the above, failure of the Purchaser to make payment of transfer duty (in property transfers over R750 000-00) will cause delays.

Electrical compliance and entomology reports

These are basic reports that need to be in place for any transfer. Failures to attend to these reports timeously affects transfer times. It must be noted that these are legal requirements, as well as requirements of the financial institutions. Once obtained a certified copy of the reports needs to be delivered to the bond registration attorney. Delivery depends on the province in which the attorney is based, with a minimum 2 day delivery time period for local deliveries, and a 5 day delivery time period inter-province.

Signature of documents

Another factor which may cause delays is the failure of the Purchaser and Seller to attend to the signature of their transfer documents.

This also applies to the signature of bond registration documents and refund forms for bond cancellation.

Delivery of guarantees

Guarantees secure the purchase price and/or cancellation figures in situations where bonds are being registered or cancelled. Any delay in the delivery of these guarantees severely impact the transfer time. It is important to note that most bond registration attorneys will not deliver any guarantees until such time as their fee is settled in full by the Purchaser.

Title conditions

Title conditions are also a factor to be considered. Whenever a restriction is contained in the Title Deed, this restriction has to be dealt with. In most cases a consent to the transfer is required by the party in whose favour the restriction is registered in favour of. Examples of these are consents by the local municipality, especially for low cost developments or pre-emptive rights contained in the conditions of title. Transfer speeds are in these matters dependent on the time it takes the holder thereof to furnish the consent.

These factors are some of the issues experienced with transfers, and transfer speeds are dependent on these individual matters being

attended to timeously. Each individual factor serves an important part of the registration of the transfer.

To ensure that the transfer times are reduced, it is important to ensure that clients are advised of their financial obligations, as well as their legal obligations. Clients should further follow up and ensure that their attorneys are in fact attending to their matters.

At Sibran & Sibran, we provide constant updates and feedback, allowing all parties to track and follow the status of the transfer, and each party is made aware of any delays, and who is responsible for that delay.

It is advisable in addition to your sale agreements, to obtain consent from the Seller to keep your office informed of the status of the transfer. Attorney/client privilege does come into play, and the consent will allow you to request progress updates and track the sale legally.

UNDERSTANDING THE “COOLING OFF” PERIOD

A “cooling off” period gives a Purchaser the right to unilaterally cancel a sale agreement.

This stems from Section 29A of the Alienation of Land Act 68 of 1981, as well as the Consumer Protection Act 68 of 2008. Under the Alienation of Land Act, the purchase price dictates whether the period applies, and under the Consumer Protection Act, any direct marketing dictates whether the period applies.

The cooling off period under the Alienation of Land Act, currently applies to properties which are sold for a value of R250 000-00 or less.

This cooling off period was legislated in order to protect Purchasers who require statutory protection. This protection only applies to residential property sales where the purchase price is R250 000-00 or less, and the purchaser is a natural person.

Commercial, industrial and agricultural properties are excluded from the application of the cooling off period. In addition, a company, close corporation and a trust is excluded from the protection afforded by the cooling off period. These categories relate to persons who can reasonably be expected to understand the nature of the transaction and if not, to obtain legal advice before entering into the transaction.

A further exclusion applies when the same Purchaser and the same Seller enter into a new sale agreement, in respect of the same land and on the same terms as previously contracted into between the parties. Therefore any Purchaser who signs a sale agreement for a piece of land, is protected by the cooling off period once only, and will not be afforded the benefit the second time around. In practice this would apply to all sales, where the cooling off was applied and the sale cancelled, or when a sale falls for any reason, and the Purchaser enters into a new sale agreement for the same property on the same terms.

Lesser known exclusions apply as well. If a Purchaser reserves the right to nominate or appoint another person to take over his/her responsibilities and rights under a contract, then no cooling off period will apply. The cooling off period will further not apply in the event that an option was exercised, which option was open for exercise for a period of at least 5 days.

Under the Alienation of Land Act, a Purchaser may not waive or relinquish the right afforded by the cooling off period, and any deposits or fees paid must be refunded within 10 days of termination of the contract. No damages are payable, and all penalties and fees are void from operation regardless of agreements to the contrary.

The cooling off period, if relied upon requires that the Purchaser give written notice to the Seller or his/her agent within 5 days of entering into the agreement. The days are calculated by excluding the day the contract was entered into, as well as excluding weekends and public holidays. Important note must be made to “offers to purchase” which do not constitute a binding sale agreement until accepted by the Seller. In all cases of offers to purchase, the 5 day period runs after the contract becomes valid and binding i.e. date of signature by the Seller.

In the event of a Purchaser entering into a further sale agreement or signs an offer for another property, the first offer or sale agreement will be automatically revoked and cancelled. Written notice must be given to the Seller of the first agreement in such an event. Failure to do so is an offence under S29A, and may result upon conviction to a fine or to imprisonment or to both a fine and imprisonment. The notice need not be delivered if the purchaser intends to purchase both properties.

A further cooling off period applies under the Consumer Protection Act, and it is important to note that this cooling off applies only when a transaction is the result of direct marketing. Marketing directly by person to person, by mail, email or sms will result in the cooling off period being applied. Under these circumstances the purchaser may rescind/ cancel

the agreement within 5 days after the agreement was concluded, regardless of the purchase price.

This must be borne in mind when dealing with new developments or direct marketing of properties, and you should ensure that the Purchaser in this event is informed of this right under S32 of the Act. To further protect yourself, include a checklist wherein the Purchaser indicates what prompted him/her to enter into the sale agreement.

Contacts:

Office Tel: 031 566 3563

Office fax: 086 614 8862

Conveyancer: 083 790 4849

Practice Manager: 081 306 0458

Email: info@sibran.co.za

Website: www.sibran.co.za

Disclaimer:

Whilst every effort is taken to ensure the correctness of the contents hereof, these notes should be used for informational purposes only, and further study is highly recommended to fully understand the subject material.