

CONVEYANCING – TRANSFER FEES

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WHAT AM I PAYING FOR?

The fees charged by conveyancers for transfers of immovable property are based on the recommended fee guidelines issued by the Law Society of South Africa from time to time. These recommended fees are designed to compensate the conveyancer for his/her legal expertise, general conveyancing duties in procuring the due and proper execution and registration of the relevant deed or document, as well as the responsibility placed on him/her for the accuracy of the facts mentioned in deeds or documents or which are relevant in connection with the registration or filing thereof. A conveyancer must specifically ensure that:

1. copies of any deeds and documents are identical as at the date of lodgement;
2. all applicable particulars and conditions of title, including endorsements and township conditions, have been correctly brought forward in any deed of transfer or certificate of title;
3. any person signing a document as principal or representative has been properly appointed and has the necessary authority to sign the relevant document on behalf of the party in question;
4. parties to deeds are correctly reflected;
5. the transaction in question is authorised by and in accordance with the constitution, regulations, founding statement or trust instrument of a trust, church, association, close corporation, society, or other body of persons being a party to such document; and
6. the purchase price is properly secured and that the seller is paid on registration of transfer.

WHAT IS INCLUDED IN THE RECOMMENDED TRANSFER FEE?

1. Taking instructions;
2. all correspondence, including the perusal of completed deeds of sale;
3. preparing and attending on signature of all powers of attorney, declarations, affidavits, resolutions, status affidavits, company certificates, exchange control certificates and other necessary preliminary and ancillary documents as well as attendances in connection with the obtaining, preparation and signature of FICA documents;
4. the payment of transfer duty or VAT and of all rates and levies charged by any lawful authority, the obtaining and making of all clearance and other certificates;
5. the obtaining of endorsements or copies of documents from the Office of the Master or the High Court or other public office (except where otherwise provided);

6. the perusal of memoranda and articles of association and trust deeds, the making of all necessary financial arrangements, including the provision and checking of guarantees and attending payment in terms thereof;
7. the drawing and preparation of any document, including all copies thereof, required for execution or registration at a deeds registry;
8. the drawing and preparation of any document, including all copies thereof, required for execution or registration at a deeds registry
9. the obtaining of registration thereof, arranging simultaneous lodgement and registration with another conveyancer or other conveyancers, where necessary;
10. the giving of all references required by the deeds registry for examination purposes; and
11. all attendances at the deeds registry.

WHAT IS NOT INCLUDED IN THE RECOMMENDED TRANSFER FEE?

- 1 the drawing and execution of deeds of sale, deeds of donation, deeds of exchange, preliminary partition agreements, deeds of suretyship and acknowledgements of debt and documents of a similar nature;
- 2 any separate act of registration of any other document which may be necessary before or in connection with the first-mentioned act of registration;
- 3 work done in connection with the resolution of a dispute between the transferor and the transferee;
- 4 any attendance arising from negotiations between the parties, resulting in a further agreement or addendum or amendment to an existing agreement;
- 5 any attendance on the issue of letters of undertaking or guarantees (other than in favour of or for bondholders, the seller or transferring attorney). The recommended fee is R400,00 per undertaking / guarantee;
- 6 any attendance on investments in trust in terms of Section 78 (2A) of the Attorneys Act of 1979. The recommended fee is R400,00 per investment, unless the investment attorney is charging a percentage of the interest earned on the investment;
- 7 any attendance or disbursement paid to a computer software supplier for purposes of receiving or drafting instructions electronically.

WHAT ITEMS ARE USUALLY SET OUT IN A FEE ACCOUNT?

1. **Our fee** is based on the recommended fee guidelines which are calculated using the value of the property being transferred.
2. **Transfer duty** (if applicable) is a tax payable to SARS for the acquisition of the property and is based on the value of the property.
3. **Postage and petties** relates to various administrative costs and expenses such as stationery, printing, telephone calls, fax charges, copies, etc. Not many items are posted via the Post Office these days but we do use (and pay for) an alternative delivery service known as Docex. Our current charge is R350, which we believe is competitive. This is supported by a recent survey undertaken by GhostDigest (please see http://www.ghostdigest.co.za/code/A_2099.html).
4. **Rates** are required to be paid to obtain a rates clearance certificate for the property. The local authority will advise us what amount is required to be paid for the seller's municipal account



payments to be up to date and rates paid two to three months in advance before it will issue the rates clearance certificate. This process is performed online and the software developer charges us a fee for requesting rates clearance figures.

5. **Livies** – a similar approach is applied as for rates (see point 4 above).
6. **Correspondents' postages and sundry disbursements** are our Pietermaritzburg lodging agents' charge for postage and petties and the same comments in point 3 above would apply here. Their postage and petties are less than ours because we do most of the correspondence, etc. Their fee for lodging and executing the documents in the Deeds Office is included in our fee.
7. **Deeds Office charges** are fees charged by the Deeds Office for registering documents and are based on a tariff.
8. **FICA fee** – we are required in terms of section 29 of the Financial Intelligence Centre Act ("FICA") to verify all parties to a transaction. For an individual, these documents include ID, proof of residence, proof of marital status, and proof of income tax number. Our fee here is less than that of many of our colleagues. Please see the link in point 3 above for confirmation of this.
9. **Investment Fee** relates to all transactions concerning monies which we invest on your behalf in terms of section 78(2A) of the Attorneys Act and includes the opening of an investment account, the procuring of guarantees (if required), the rendering of statements (if required), the closing of the account on the date of registration of transfer, and the accounting to you for the interest. Obviously this fee won't apply if we don't invest money for you but simply keep it in trust. We invest our trust money with Grindrod Bank (each client has a separate account for auditing purposes) and are currently receiving an interest rate of 5,25% on daily call. We normally charge a commission of 5% of the interest earned (excluding VAT). We find Grindrod's system to be far superior to that of the "big" banks and they give a much better interest rate.

WHAT ABOUT A DISCOUNT?

The decision whether to grant a discount is usually made when the matter is lodged in the Deeds Office as we can fully assess the matter at that stage. Our fees are based on the recommended fee guidelines issued by the KZN Law Society and are therefore considered reasonable. We have granted discounts in the past and use the following principles when considering whether to grant a discount:

- We start with the recommended fee guidelines issued by the Law Society.
- We then look at the complexity of the matter and whether any additional work is/was required (for example, consents from a Homeowners Association or a developer).
- We look at the size of the transaction. Larger transactions carry a larger fee which makes it easier for us to grant a discount. This must be balanced however with the fact that larger transactions also carry increased risk for the conveyancer.
- We then look at whether there have been any delays for which the purchaser is responsible. For example, were the transfer documents signed on time? Was our pro forma account paid timeously?
- Lastly, we look at the prospects of receiving further business from the purchaser. If the purchaser is an existing client this would be a factor in favour of granting a discount on fees.

If there are good reasons to grant a discount (based on the above factors), we then look at the amount of the discount. Conveyancing is our business and any discount will affect our cash flow and profitability. We must also bear in mind that our risk does not decrease if we decrease our fee.

