

THE TRANSFER PROCESS

Newsletter 4/2012

Once an immovable property sale agreement has been signed by all parties, ownership of the property in question needs to be transferred from the seller to the buyer. This process is handled by a conveyancer.

Who appoints the conveyancer?

A conveyancer is an attorney who has passed conveyancing examinations and has been admitted as a conveyancer by the High Court. Conveyancers are the only attorneys permitted to attend to the transfer of ownership in immovable property. In KZN the general rule is that the seller nominates the conveyancer. The logic behind this is that it is the seller's duty to deliver the property and the conveyancer is therefore the seller's agent. A conveyancer has an obligation, however, to remain objective when advising the parties involved unless s/he discloses at the outset that s/he is acting for one party only. Although the seller generally appoints the conveyancer, the buyer pays the conveyancer's fees for the transfer.

In addition to the transfer process, the seller's bond (if there is one) needs to be cancelled and the buyer's bond (if required) needs to be registered against the title deed of the property. The cancellation process and the bond registration process also involve conveyancers but these processes are not dealt with in detail in this newsletter.

The transfer process typically includes the following:

1. Receipt of copy of sale agreement and instructions to process transfer of ownership:

The conveyancer's duty is to implement the terms and conditions of the sale agreement. The conveyancer will open a file, comply with his/her FICA obligations, and draft transfer documents once the suspensive conditions in the sale agreement (for example the approval of a bond) have been met.

2. Search of Deeds Office records:

The conveyancer will conduct a search of the Deeds Office records to confirm the property description and ownership details, and whether any mortgage bonds or interdicts have been registered against the property. The conveyancer must also ascertain whether any third party (for example a Homeowners' Association) is required to consent to the transfer.

3. Existing bond/s or interdicts on the property:

If there is an existing bond over the property, it must be cancelled (or the property released from the operation thereof) simultaneously with the transfer. Interdicts also need to be removed. The seller provides the conveyancer with the seller's bond account number to enable the conveyancer to write to the bondholder requesting a copy of the title deed, the outstanding balance on the bond, and the bondholder's consent to the cancellation / release. The bondholder will then instruct one of its "panel" attorneys to attend to the cancellation / release, for which the seller

will pay. Most banks require a minimum period of notice, usually 90 days, for the cancellation of a bond, failing which they are entitled to charge an “early termination charge” in terms of the National Credit Act. Sufficient time should be allowed for this notice period.

4. Permission from Municipality (Rates Clearance Certificate):

There cannot be any outstanding rates owing on the property at the time of transfer. The municipality’s consent in the form of a rates clearance certificate is therefore required for transfer to be effected in the Deeds Office. The conveyancer requests “rates figures” from the municipality. This is a statement of money presently due and future rates, a few months in advance. The purchaser is usually asked to pay the full amount reflected on the rates figures and is then refunded a pro rata share from the proceeds of the sale once the transfer is registered.

5. Preparation of preliminary documents:

On receipt of the Deeds Office particulars and fulfilment of all suspensive conditions, the conveyancer will prepare the documentation required by the Deeds Office and SARS to be signed by both parties. If a party will be away when documents are to be signed, transfer will be delayed unless arrangements are made for signature prior to leaving.

6. Signature and costs:

On signature of the preliminary documents, the conveyancer will ask the buyer to settle the pro forma account for the transfer costs. The pro forma account will include the conveyancer's fee, transfer duty (if applicable) and other disbursements, including the fee charged by the Deeds Office for processing the transaction. It is important that the buyer settle these costs as soon as possible after presentation of the account to enable the conveyancer to obtain a Transfer Duty Receipt timeously. Delay in payment can delay the date of transfer as SARS will only issue the Transfer Duty Receipt upon receipt of payment of the transfer duty. Transfer Duty is payable at varying rates on all sales where the property is not part of the Seller’s VAT registered enterprise and where the purchase price is more than R600 000.00.

7. Buyer’s bond:

If a bond is required to pay the purchase price or part thereof, the bank granting the bond will appoint one of its “panel” attorneys to prepare the bond documentation. These attorneys will liaise with the transferring conveyancer but will make independent arrangements with the buyer for signature of the bond documents and will present their bill for their services directly to the buyer. It is essential that the buyer budgets for these costs and understands the bond conditions as failure to comply with the conditions could prevent the bond from being registered and delay or even extinguish the sale.

8. Final phase:

When all the attorneys involved are ready, they arrange to hand in their documents simultaneously at the Deeds Office. These documents are then inspected by various examiners and, if in order, transfer will be “registered”. The date of registration is the date on which ownership is actually transferred to the buyer. This procedure in the Deeds Office takes approximately ten days if there are no backlogs. The documents may be queried or “rejected” during the examination process if they are found to be defective in any way. If the documents are "rejected" the parties will have to rectify the problems before the documents can be relogged.

9. Transfer is registered – now what?

The seller usually receives payment of the purchase price, less any expenses due by the seller, 1 to 2 days after registration, depending on the banks involved. The title deeds will be microfilmed by the Deeds Office and then



returned to the conveyancer for onward transmission to the buyer (or his bank if the purchase has been financed through a bond).

10. How long does this process take?

Although it is difficult to accurately advise when registration of transfer will take place, provided all parties perform their obligations timeously and there are no unusual delays, a transfer should take roughly two months from receipt of the transfer instruction by the conveyancer.

11. Transfer costs?

When deciding to sell / purchase immovable property it is important for the seller and the buyer to know, prior to signing the sale agreement, what costs may be involved so that they can budget accordingly. Conveyancing fees are usually based on the recommended fee guidelines issued by the province's Law Society from time to time. In determining this fee, the Law Society takes into account, *inter alia*, the legal expertise required and risk associated with the transaction.

In a typical transfer, the seller will usually pay the following:

- Costs of cancelling any existing bonds or removing any interdicts over the property;
- A pro rata share of rates (and levies, if applicable);
- Estate Agent's Commission (if applicable);
- Electrical Compliance Certificate;
- Gas Compliance Certificate and / or Entomologist Certificate (if applicable).

In a typical transfer, the buyer will usually pay the following:

- Conveyancer's fees and disbursements for the transfer;
- Cost of registration of the new bond (if applicable);
- Transfer duty if the property value is over R600 000,00;
- Pro rata share of rates (and levies, if applicable).

