



# DHOOGELAW

Attorneys • Notaries • Conveyancers

## BUYING AND SELLING IMMOVABLE PROPERTY

**CONVEYANCING** describes the legal procedure whereby ownership of immovable property is changed, or in other words, how ownership is “conveyed” from the existing owner (seller) to the purchaser.

### THE TRANSFER PROCESS

Property transfers are attended to and registered in the Deeds Registry by Conveyancers. A Conveyancer is an attorney who has passed a specialised conveyancing examination and who has been admitted as a Conveyancer.

#### 1. THE SALE AGREEMENT

For most people, the buying and/or selling of immovable property constitutes the single most important and financially largest transaction they enter into in their lifetimes.

The Estate Agent will explain the terms of the sale agreement to the parties - who must ensure that they ask questions and understand all the terms before signing the agreement. Once the Offer to Purchase is signed, it becomes a binding contract between the Seller and Purchaser (Sale Agreement).

As a Purchaser, do not be pressurised by Estate Agents to sign and submit an Offer to Purchase urgently. Likewise, as a Seller do not be pressurised into having to accept an Offer to Purchase in a matter of hours. Insist on sufficient time that would enable you to think about it and be given a reasonable amount of time to consult with your attorney.

*The nomination of the Conveyancer to attend to the transfer is the Seller's prerogative. In all property transactions, the conveyancer, by law, acts on behalf of the Seller, and as such, represents the interests of the Seller. The Seller chooses the conveyancer (the "Transfer Attorney") not the Purchaser nor the Estate Agent. The Purchaser, however, pays the conveyancing costs.*

The Agreement of Sale may contain "suspensive conditions". These are conditions which must be fulfilled before the transfer process can begin. The most common suspensive condition is the granting of a bond to the Purchaser.

2. The purchaser applies directly to a bank or through a bond originator for the approval of a mortgage bond. Once the bond is granted, the financial institution will appoint an attorney on their panel to attend to the registration of the mortgage bond on their behalf. Bond registration costs will be payable by the Purchaser to the duly appointed attorney (the bond attorney).
3. The appointed transfer attorney requests bond cancellation figures from the current bondholder (if necessary) and applies for the rates clearance figures from the local municipality.
4. The transfer attorney drafts the transfer documents. To enable the attorney to prepare the transfer documents, she will require the Purchaser's and Seller's details together with copies of their identity documents, marriage certificates, ANC's, divorce orders, etc. She will also require all FICA documentation. The Parties will then be called upon to sign the transfer documents and pay the costs. Costs must be paid before registration.

The attorney collects the following funds from the seller and purchaser respectively :

#### FROM THE SELLER

- Amounts due to the local municipality to obtain a Rates Clearance Certificate ;

*(The purchaser will be liable for rates from the date of registration of the property in his name. Approximately 3 months' payment in advance will be required by the attorney to enable her to obtain a rates clearance certificate from the rates department. No transfer can be registered until the Deeds Office has proof that the rates have been paid. If the property is a sectional title unit, then a levy clearance certificate must be obtained).*

- Bond cancellation costs

#### FROM THE PURCHASER

- Deeds Office registration fees ;
  - Provision for pro-rata share of rates and taxes due to the local authority to obtain the Rates Clearance Certificate ;
  - Transfer duty payable to SARS ; *(This is a tax payable to the state on all transfers of immovable property and is calculated as a percentage of the purchase price. No transfer can be registered until the Deeds Office has proof that the transfer duty has been paid).*
  - Transfer Fees *(These fees are charged in accordance with a tariff issued by the Law Society).*
5. The transfer attorney pays the amount due to the local municipality to obtain a rates clearance certificate.
  6. The necessary documents are submitted to the Receiver of Revenue by the transfer attorney to obtain a transfer duty receipt.
  7. The documents are lodged in the Deeds Office. The transfer, new bond (if applicable) and existing bond cancellation (if applicable) documents must be lodged

in the Deeds Office at the same time to ensure simultaneous registration. The respective attorneys liaise with one another to ensure that this is done.

8. From date of lodgement, it usually takes between 7 and 10 working days until date of registration. The parties are notified on the day of registration and the Seller is paid out on the following day. The parties are furnished with final accounts reflecting the final adjustments between the parties in respect of rates, levies, occupational rent and other matters.
9. If you have registered a mortgage bond over the property the original Title Deed will be forwarded to the bondholder after registration. If there is no mortgage bond registered, the original Title Deed will be forwarded to you for safekeeping.