

CONVEYANCING

This note is designed to inform residential home sellers and buyers about the process of conveyancing.



WITH COMPLIMENTS FROM

VALENTINE & Associates

Attorneys ~ Conveyancers ~ Notaries ~ Administrators of Estates

3rd Floor, The Piazza on Church Square, 39 Adderley Street, Cape Town

Tel: (021) 465 7474

Fax: 086 607 4763

Email: clive@valentine.law.za

CONVEYANCING

Buying and Selling of property

your questions answered

What is conveyancing?

The term "conveyancing" describes the legal process whereby a person becomes the registered and lawful owner of fixed property and ensures that his ownership cannot be challenged. "Fixed property" is any land, whether improved or not, such as a house, farm or flat. Formal conveyancing is also required for sectional title ownership, time-share ownership, the registration of mortgage bonds and other rights in fixed property such as servitudes. This note deals with the sale of fixed property, although the procedures are similar for the transfer of all forms of ownership.

A conveyancing transaction involves a chain of steps which begins with the deed of sale and which continues through to the ultimate registration of ownership and the reconciliation of finances and payments.

Who appoints a conveyancer?

In South Africa the usual practice is for the seller to appoint a conveyancer for a property transaction, although this, like other aspects of a sale agreement, can be varied

as a result of negotiation between the parties. A conveyancer is an attorney who has acquired the additional qualification of "conveyancer". This qualifies him to attend to the registration in the deeds office of various transactions involving fixed property. The purchaser may also appoint a conveyancer to advise him, but his charges will be over and above the conveyancing costs submitted by the seller's conveyancer, who will be doing the actual transfer.

What is the first step in the sale of fixed property?

The first prerequisite is the deed of sale. This must be a written agreement which is signed by both the purchaser and the seller.

A written "Offer to Purchase" signed by a purchaser and accepted by a seller also constitutes a deed of sale. A verbal contract for the sale of fixed property is not valid.

A purchaser also has various options in what name the property is to be registered, for instance, in joint names of husband and wife, a trust, a close corporation or company, etc. If he is undecided, he should seek advice prior to signature of the offer or agreement. Amendments subsequent to signature may lead to delays and additional expense.

The deed of sale is an important document which must be carefully examined. The parties must check that the price is what has been agreed on, that the

terms of payment are acceptable to both parties and that the arrangements in respect of financing agree with the terms of payment.

Occupancy of the property does not necessarily have to coincide with registration of transfer although this is desirable. If occupation takes place prior to registration, the deed of sale must provide what rent is payable until registration.

Risk in the property passes to the purchaser when the deed of sale is signed, although this consequence can be (and often is) changed in the deed of sale itself. The purchaser must therefore, take out insurance in appropriate cases.

The purchaser is usually responsible for payment of transfer costs (see below). These are fixed by tariff in the case of transfer duty. The conveyancer's fee is determined by reference to Law Society recommendations which are widely circulated within the property industry. The purchaser therefore will be able to know in advance, to within a few rands, what the cost will be.

Finally, if the sale is subject to the granting of a bond, this must be specified in the deed of sale.

At this stage the property still does not legally belong to the purchaser, although he has the right to require the seller to transfer the property to him.

What happens next?

The property must be registered in the deeds office. This is a lengthy and complex process.

Both the seller and the purchaser will be required to call at the office of the conveyancer to sign certain documents which have been prepared by the conveyancer and which will enable the conveyancer to effect the transfer. The documents which will have to be signed are the following:

A power of attorney

This must be signed by the seller and it authorises the conveyancer to attend to the transfer on the seller's behalf.

* **Affidavits in respect of ID, status,**

solvency & FICA (Financial Intelligence Centre Act) compliance

The conveyancer is required by law to certify certain facts upon registration. He therefore needs to make careful investigation and obtain satisfactory proof. For this reason, seller and purchaser will be required to declare on oath inter alia their ID Nos., his/her marital status and the fact that their estates have never been sequestrated and are solvent. If any party is an unrehabilitated insolvent, this fact must be brought to the conveyancer's attention who will advise of the implications thereof. In order to comply with the Financial Intelligence Centre Act, the parties also have to declare under oath their residential address and tax number.

*** Transfer duty declaration**

Transfer duty is a form of tax payable to the State and is normally calculated on the consideration paid for the property. No transfer can be registered unless there is proof that the transfer duty has been paid and the conveyancer will pay the transfer duty on behalf of the party liable therefor after he has been put in funds to do so.

*** Mortgage or bond documents**

If the purchaser requires a loan from a financial institution (bank or building society) or from his or her employer, the lender will insist that the purchaser register a mortgage over the property to secure the loan. To enable the bond to be registered the purchaser will be required to sign a power of attorney authorising the conveyancer to pass the bond as well as ID, status, solvency and FICA affidavits referred to above. Each financial institution normally also has specific ancillary documentary requirements and their conveyancer will guide the purchaser through this process.

What are the costs involved?

a) Transfer costs

The costs relating to the transfer of fixed property fall into three main categories:

- * Transfer duty which is payable to the State
 - * The conveyancer's fee, which is calculated on a sliding scale based on the purchase price
 - * Miscellaneous costs, such as, the fee charged by the Deeds Office for each transaction registered, postage & petties, rates clearance fees etc.
- b) Bond costs

Where a bond has to be registered the purchaser will have to pay Bank costs (usually an initiation fee and a valuation fee) and the conveyancer's fee (calculated on a sliding scale based on the amount of the bond).

- c) Share of rates or monthly levy

The purchaser may be called upon prior to registration to pay a pro rata share of the annual rates or monthly levy as determined by the local authority or body corporate respectively. The purchaser's liability is calculated from the date set out in the deed of sale.

Who arranges these transactions?

Having carried out the necessary searches in the deeds office and having checked all the details of the property and parties to the transaction, the conveyancer prepares the title deed and other necessary documents and having been placed in funds pays the transfer duty and settles the outstanding rates or levy.

If the seller has an existing mortgage bond over the property, the conveyancer would also have arranged with the financial institution for this bond to be cancelled which includes both obtaining the title deed and satisfying the institution that the amount of the loan will be repaid upon registration. The financial institution will instruct its own conveyancers to attend to the cancellation of

the bond in co-operation with the seller's conveyancer and to safeguard its interests in this regard. The cancellation conveyancer's fees are the responsibility of the seller. A consent to cancellation needs to be signed by the financial institution, but neither seller nor purchaser are involved in any signature in this connection.

Once the documents have been signed by the purchaser and the seller, and the purchaser has paid the costs and made satisfactory provision for the payment of the purchase price, the conveyancer can proceed with the registration of transfer of property. (He will only do so, however, once the purchase price has been paid or secured).

What happens at the Deeds Office?

The conveyancer will lodge the documents that he has prepared in the deeds office for registration. The deeds office is a government registry of all fixed property and rights in fixed property. If there is a bond to be registered and/or a bond to be cancelled the conveyancer attending thereto (who is usually appointed by the Bank) will also lodge those documents in the deeds office for registration simultaneously with the transfer documents.

The examiners in the deeds office scrutinize the documents to ensure that they comply with all relevant legislation and regulations. When they are satisfied they inform the conveyancer that the transaction is ready for registration and thereupon, in the presence of the conveyancers and the Registrar of Deeds, the property is registered in the name of the purchaser. The new bond is registered and the old bond cancelled simultaneously.

On registration the purchaser becomes the lawful owner of the property and his title cannot be upset by any person unless it has been obtained by fraud. The title deed reflecting his ownership will be released by the deeds office a few weeks after registration and will be handed to him by the conveyancer, unless a bond has been registered, in which case the title deed is retained by the bondholder.

How long does the process take?

Having read this note you will be

aware that conveyancing is a complex field requiring extensive knowledge, skill and attention to detail on the part of the conveyancer. There are a number of parties and steps involved in a conveyancing transaction and delays are possible at any stage of the transaction. It is important, therefore, that the parties should sign the documents and pay the required amounts as soon as the conveyancer calls on him or her to do so; this helps to ensure that there are no unnecessary delays.

The length of time it takes to register the transaction in the deeds office is dependent on the various factors mentioned above. On average the time taken to register the transfer of a property, where a bond is involved, will be **approximately two months** from the time that the conveyancer is instructed. Unforeseen difficulties may cause the period to be extended.

What recourse do I have if the conveyancer is negligent?

Conveyancers are subject to the disciplinary powers of the law society of the province in which they practise. Law societies will act in the interest of the public. If someone believes that a conveyancer has performed his tasks negligently he may lodge a complaint with the relevant law society which will investigate the matter and, in appropriate cases, will discipline the conveyancer.

If the conveyancer has been negligent and the purchaser or the seller should suffer any loss thereby they will have a claim against the conveyancer for the amount of the loss.

Why is a conveyancer necessary?

Most people are accustomed to doing much of their personal business without the need of a legal or other adviser. However, a great deal is at stake in the transfer of fixed property. It is generally the largest single asset that a person owns and the transaction for the purchase or sale of fixed property is probably the most important contract undertaken by individuals.

The law therefore provides that only qualified conveyancers may attend to the transfer of fixed property and related transactions. This

is not only to give proper protection to the rights and interest of the public, but also to safeguard the integrity of the South African land registration system, which is universally regarded as one of the best in the world.

When all the checks have been made, all the procedures followed by the conveyancer and the property has been registered in the name of the purchaser, he can be assured that he has good and unassailable title to the property.

*If you desire any clarification or further information, you are welcome to contact **attorney Clive Valentine** personally. Contact details are given at the commencement of this note.*

We wish you a pleasant "conveyancing experience".



VALENTINE & Associates

Attorneys ~ Conveyancers ~ Notaries ~ Administrators of Estates

Created November 1996
Amended August 2012