

THE CONVEYANCING PROCESS

Congratulations!!! After a long search you have finally decided to purchase the house of your dreams. It is probably one of the most important financial decisions you will ever make.

Now, the property must be transferred from the Seller into your name. A lot of mystery surrounds the conveyancing process. The following are vital terms and phrases that are used in the process. It is important to understand the precise meaning of the following phrases:

Agent's Commission: That portion of the purchase price that the Seller pays to the estate agent if one is involved because of his agency to secure the sale from the Seller to the Purchaser.

Bond: In return for lending the money to fund the purchase price of the property, the bank registers a bond over the property and becomes the bondholder. The property is the bank's security if the owner defaults. Transfer of the property cannot be achieved without the bondholder's consent.

Cancellation of Existing Bond: If a bond is registered over the property in the name of the Seller's banking institute, the bond must be cancelled. The bank provides an amount that it will accept as payment for the outstanding amount of the home loan.

Conveyancer: An attorney who has passed the necessary examinations and has been admitted by the High Court as such who attends to the registration of the transfer of the property from the Seller to the Purchaser.

Costs of Transfer: The various attorney's costs, as well as the duty that is payable by the Purchaser. It is important to remember that the sole function of the Conveyancer is to transfer the property from the Seller to the Purchaser. Any work not part of that which is done by the Conveyancer such as collecting occupational interest, as well as sorting out problems, is not included and can be separately charged by the conveyancer to the party who has given the instructions.

Deeds Office: That Government Office where each and every piece of property in the Republic of South Africa is recorded. Registration of the transfer finally takes place in the Deeds Office.

Electrical Compliance Certificate: That certificate issued by the Seller in terms of relevant legislation and which has to be issued by an accredited electrical contractor to the effect that electrical wiring etc. in the premises are up to a safe standard. Depending on the terms of the deed of sale, the Seller is responsible for the issuing thereof, and the cost relating thereto, inclusive of any cost relating to bringing the building up to the standard required by the electrical contractor.

Occupation Date: That date inserted in the Deed of Sale when the Seller vacates the property and hands it over to the Purchaser. Make sure that the occupation date is convenient to both the Seller and the Purchaser, because it cannot be amended unilaterally.

Occupational interest / Occupation rent: That amount of money payable by the party enjoying occupation of the premises. As from the occupation date, the amount is payable monthly in advance without any deduction. These monies are apportioned by the conveyancer on registration of transfer.

Rates Clearance Certificate: It is the certificate that the conveyancer obtains from the relevant local authority, or if the property is a sectional title unit from the managing agent of the body corporate indicating that rates and taxes or levies have been paid. The conveyancer pays these monies up front to enable the authority concerned to consent to the transfer. He takes a deposit from the purchaser, and apportions the various sums upon registration of transfer.

Registration of Transfer: That is the end of the line when the property is finally registered in the Deeds Office in the name of the Purchaser. From that moment onwards the Purchaser becomes the full owner of the property.

Risk: Means responsibility. In the majority of cases, risk passes from the Seller to the Purchaser on date of registration of transfer. From that date, the purchaser is responsible for rates, taxes and all imposts levied on the property. In this regard the Deed of Sale must be studied carefully. Even though the Purchaser is in possession of the premises, the Seller might still be saddled with the risk in respect of the premises, i.e. has to ensure that the property is adequately insured, etc.

Special Investment of Trust Money: Often the purchase price is guaranteed by means of a cash deposit. Upon receipt of written instructions, the conveyancer will invest the cash in an interest-bearing account in terms of the Attorneys Act, with interest accruing being for the benefit of the purchaser. The estate agent can also invest such monies in his trust account, with the interest payable to the purchaser. Rest assured that these monies are protect by law; if it is embezzled by the attorney or the estate agent, the purchaser can claim it back from the relevant fidelity fund.

Transfer Duty: It is that amount of money that the Purchaser pays to the Receiver of Revenue which is regulated by the Transfer Duty Act.

Now that a number of key concepts have been explained, let's have a look at the process and the key players.

The purchaser is the driver in the host seat. He must ensure that his bond application is processed as quickly as possible at the relevant financial institution. That does not only mean that the Purchaser being the applicant must be approved by the Bank, but also the property is the question.

The Bank must be put in possession of the Deed of Sale and the purchaser must be in constant contact with the bank to sign all relevant documents and papers specifically regarding marital status, identity numbers, and proof of income.

The Seller must not stop making bond repayments even though the property is sold. Upon registration of transfer, the bank will render a final account. In most instances the bank will furnish the Seller with a refund of amounts overpaid.

The relevant conveyancers will require the parties to sign documents relating to the transfer. They will also require copies of identity documents and proof of marital status, such as a copy of a Antenuptial contract. After all the documents have been completed and signed, the transferring attorney arranges for lodgement of all the relevant documentation in the Deeds Office. Once all the documents have been lodged at the Deeds Office, the Personnel of the Deeds Office check through all the documents and sometimes require additional information and from the conveyancer. If the documents are in order, these requests should not unnecessarily delay transfer. It takes about 1½ to 2 weeks from lodgement of the documents in the Deeds Office to the registration of transfer.

Once the transfer is registered, the Purchaser's bank pays out in terms of the bond and the conveyancer apportions rates & taxes as well as make a final calculation in respect of interest due to the Purchaser in respect of any special investment of the money.

The estate agent then becomes entitled to his/her commission.

The above has to be seen in the light of the express terms and conditions of the Deed of Sale, as the parties are free to contract as they deem fit. If every player plays his part, the conveyancing process will be smooth as silk, and every one will be satisfied.

THIS DOCUMENT WAS COMPILED BY

DAAN MOSTERT (BA LLB (Stell) LLM (SA) Notary & Conveyancer Partner BREYTENBACH-MOSTERT Attorneys
First Floor, Sunnyside Centre, 13 Frost Street, MILPARK
TEL No: (011) 726-7222 Fax No: (011) 726-7225

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