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BRIEF PROCEDURE FOR THE PROPERTY TRANSFER

The sale of a property involves the sale and transfer of the property from the Seller to the Purchaser. The property may be residential, commercial, industrial, farm portion or agricultural holding.

As the owner of the property, it is the Seller's prerogative to nominate the Conveyancer (that is, the Transferring Attorney/Conveyancing Attorney) to attend to the transaction. The Estate Agent, or if no estate agent is involved in the transaction then the parties, will send a copy of the Agreement of Sale (also known as an Offer to Purchase) to the Conveyancer.

Upon the receipt of the agreement of sale (offer to purchase) from the Estate Agent or the parties, the Conveyancer will attend to the whole transaction in accordance with the terms of the agreement as follows:

1. request the existing mortgage bondholder (the Bank) for cancellation figures and the original title deed;
2. liaise with the Seller and Purchaser and obtain copies of identity documents, marriage certificates, antenuptial contracts or close corporation/company/trust documents, whichever is applicable / FICA documents/proof of residence or street address/ tax numbers, VAT numbers if applicable;
3. collect the deposit and invest it in an interest bearing trust account, interest to accrue to the Purchaser to date of registration – if the deposit is not payable to the Estate Agent;
4. ensure that the Purchaser's new mortgage bond is granted in writing by the applicable Bank on due date in terms of the agreement of sale, if the sale is subject to the Purchaser obtaining a bond;
5. request a rates clearance certificate assessment from the local authority; levy clearance assessment from the managing agents, if a sectional title unit; levy clearance certificate assessment from the property owner's/homeowners' association, if the property is in a cluster development or property estate. (These payments are for a period in advance, that is, for a projected registration date. A provision is added to the transfer costs payable by the Purchaser and the apportionment is done on registration)
6. draft transfer documents and arrange signature by the Seller and Purchaser;
7. transfer costs are payable by the Purchaser on signature of the documents (see my schedule setting out the transfer tariff fees and transfer duty);
8. call for bank guarantees from the Purchaser or if applicable from the bond attorney (acting on behalf of the Bank); the Purchaser will be requested to sign bond documents at the bond attorney and pay the bond costs;
9. pay the transfer duty to the South African Revenue Service and obtain the transfer duty receipt or transfer duty exemption receipt;
10. pay the rates/levy/property owners assessments and obtain the necessary clearance certificates;
11. secure the full purchase price in the form of bank guarantees or payment before the guarantee due date;
12. forward a required guarantee to the bond cancellation attorney to secure all amounts outstanding to cancel the Seller's existing bond;
13. ensure that the electrical compliance certificate is issued and if applicable, the gas conformity certificate and the electric fence certificate;
14. when the transfer, new bond and bond cancellation are ready, arrange simultaneous lodgement in the appropriate Deeds Office;
15. under normal circumstances, the Deeds Office takes approximately 12 working days to inspect the documents. Unless there are any queries or notes raised, the matters come up "on prep" to enable registration to take place the next day. Simultaneous registration of the transfer of the property from the Seller to the Purchaser, the cancellation of the Seller's existing bond and the Purchaser's new bond then takes place by means of the documents being executed by the Conveyancers and the Deeds Office;

- 16. all parties are notified of registration;
- 17. payment of the guarantees are effected the day following registration;
- 18. attend to payment of the Estate Agent's commission, apportion rates if applicable/levies between the Seller and Purchaser, adjust occupational rental if requested and pay the nett proceeds to the Seller and any refund due to the Purchaser;
- 18.1 the Seller is liable for rates, refuse and sewerage charges to date of transfer, unless otherwise stated in the agreement. Depending on the requirements of the municipality, the Conveyancer will adjust the rates, refuse and sewerage charges. For City of JHB the full assessment is allocated to the Seller and the municipality adjusts and refunds the Seller and charges the Purchaser separately from date of transfer.
- 18.2 the party occupying the property is responsible for water and electricity charges. The Conveyancer does not attend to these accounts nor with their disconnection/connection as the Seller and Purchaser need to make the necessary arrangements directly with the appropriate authority/Eskom if applicable, fill in forms, pay deposits etc. The parties should take meter readings with them to the municipality or Eskom if applicable.
- 18.3 subject to the terms of the agreement and assuming that registration date does not correspond with occupation date by the Purchaser, occupational rental will be payable by the party occupying the property whilst not the owner;
- 18.4 the amount paid to the Bank to cancel the Seller's existing bond is usually a projected figure and the Bank will adjust the figures on registration and will refund the Seller the overpayment;
- 19. notify the local authority/managing agents and property/homeowners' association of registration of transfer;
- 20. the new title deed is released by the Deeds Office approximately 2/3 months after registration. The original title deed is sent to the Purchaser or, if there is a new bond, it will be sent to the Purchaser's bondholder (the Bank) to hold as security.

The whole process usually takes approximately 9 to 12 weeks, depending on the finances, the terms of the agreement, the time periods to obtain a bond or to secure the purchase price, and the requirements of the Purchaser and the Seller.

The sale of a property may also involve if applicable the sale of the member's interest in a property owning close corporation or the sale of shares in a property owning company. The procedure here will involve the Deeds Office and the Companies Office. Transfer duty is now payable on the purchase price of the member's interest or shares.

THE SELLER'S RESPONSIBILITIES:

- a)..... Provide the Conveyancer with copies of personal/close corporation/company/trust documents, whichever is applicable, FICA, tax number, existing bond details, copies of existing rates, levy, association accounts;
- b)..... Arrange and obtain the electrical compliance certificate, gas certificate and electric fence certificate if applicable; as well comply with any conditions of sale;
- c)..... When provided with a copy of the rates/levy assessment by the Conveyancer, and if not in agreement with the figures, will take the matter up with the local authority/managing agents directly and will provide the Conveyancer with an amended assessment;
- d)..... Arrange final readings for water and electricity at the appropriate authority after transfer;
- e)..... Make arrangements regarding the telephone, alarm/security company, garden service and change of address.

THE PURCHASER'S RESPONSIBILITIES:

- a)..... Provide the Conveyancer with copies of personal/close corporation/company/trust documents, whichever is applicable, FICA- proof of residence, tax number;
- b)..... If applicable, make application for the bond and provide the Conveyancer with the name of the bank and bond attorney appointed by the bank;
- c)..... Make payment of the deposit to the Estate Agent/Conveyancer in terms of the agreement, if applicable;
- d)..... Pay the transfer to the Conveyancer on signature of the transfer documents and if applicable pay the bond costs to the bond attorneys on signature of the bond documents;
- e)..... Ensure that the full purchase price is secured to the Conveyancer by the due date set out in the agreement of sale;
- f)..... Arrange to fill in forms and put down deposits for water and electricity at the appropriate authority after transfer – take a copy of the agreement of sale, identity document and documents from the Conveyancer;
- g)..... Make arrangements regarding the telephone, alarm/security company, garden service.

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