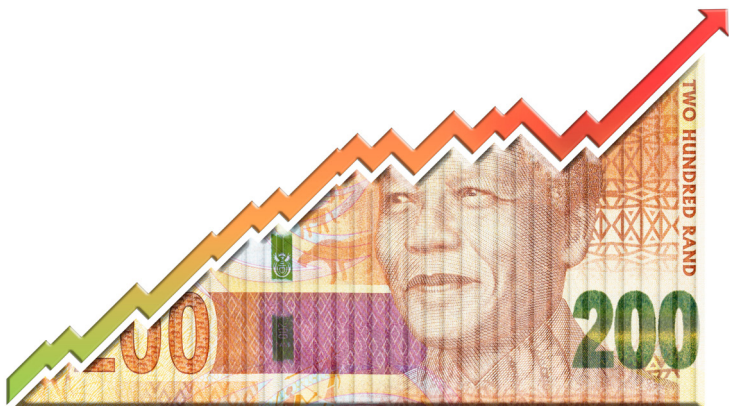


# Property & Tax Guide

2017/2018



**B R E N D A T A N N E R**

ATTORNEY › NOTARY › CONVEYANCER



# B R E N D A T A N N E R

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ATTORNEY › NOTARY › CONVEYANCER

*All conveyancing matters and the  
transfer of all types of property situated  
anywhere in South Africa.*

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## IMPORTANT NOTE AND DISCLAIMER

This guide is an easy reference, pocket-sized overview of the South African Tax System and residential property, incorporating announcements made in the Budget delivered on 22 February 2017.

- ◆ The information contained in this guide is a summary of current legislation, budget proposals and property related information.
- ◆ We suggest that you do not act solely on material contained in this guide as the nature of the information contained herein is general and may in certain circumstances be subject to misinterpretation. In addition, the budget proposals may not include all legislative adjustments which could be made in the near future. The information is provided with the understanding that no legal or professional advice is being rendered in this guide. We recommend that our advice be sought when encountering these potentially problematic areas.
- ◆ It is specifically noted that the Table of Bond and Transfer Costs are illustrative in nature and based on recommended guidelines of fees issued by and on behalf of the various law societies from time to time. Our fees may therefore vary from the guideline, based on the requirements of each specific matter quoted for.
- ◆ While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever will be accepted for any inaccuracies, errors, or omissions.

## 2017/2018 BUDGET HIGHLIGHTS

- ◆ New personal income tax bracket of 45% for taxable incomes above R1.5 million.
- ◆ All rebates and taxable income bracket amounts, will be increased by 1 per cent from 1 March 2017.
- ◆ Tax rate for trusts other than special trusts has been increased to 45%.
- ◆ Dividend withholding tax rate increased to 20%.
- ◆ The annual allowance for tax free savings accounts will be increased to R33 000.
- ◆ Anti avoidance measures will be expanded to prevent taxpayers utilising companies as a conduit for low interest loans to trusts.
- ◆ With respect to employer provided exempt bursaries, it is proposed to increase the income eligibility threshold for employees from R400 000 to R600 000, and the monetary limits for bursaries from R15 000 to R20 000 for education below NQF level 7, and from R40 000 to R60 000 for qualifications at NQF level 7 and above.
- ◆ The exemptions from income tax for employees working outside South Africa for more than 183 days a year is to be narrowed to only apply where the income is subject to tax in the foreign country.
- ◆ A 30c/litre increase in the general fuel levy.
- ◆ A 9c/litre increase in the Road Accident Fund Levy.
- ◆ The duty-free threshold on purchases of residential property will be increased from R750 000 to R900 000, effective 1 March 2017.
- ◆ Sugar Tax to be implemented as soon as necessary legislation approved by Parliament.
- ◆ A revised Carbon Tax Bill will be published for public consultation and tabled in Parliament by mid-2017.
- ◆ Excise duties on alcoholic beverages and tobacco products will increase by between 6.1 per cent and 9 per cent.

**NORMAL RATES OF TAX PAYABLE BY  
NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2018**

<b>TAXABLE INCOME</b>	<b>RATES OF TAX</b>
R0 - R189 880	+ 18% of each R1
R189 881 - R296 540	R34 178 + 26% of the amount above R189 880
R296 541 - R410 460	R61 910 + 31% of the amount above R296 540
R410 461 - R555 600	R97 225 + 36% of the amount above R410 460
R555 601 - R708 310	R149 475 + 39% of the amount above R555 600
R708 311 - R1 500 000	R209 032 + 41% of the amount above R708 310
R1 500 001 and above	R533 625 + 45% of the amount above R1 500 000

**NORMAL RATES OF TAX PAYABLE BY  
NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2017**

<b>TAXABLE INCOME</b>	<b>RATES OF TAX</b>
R0 - R188 000	+ 18% of each R1
R188 001 - R293 600	R33 840 + 26% of the amount above R188 000
R293 601 - R406 400	R61 296 + 31% of the amount above R293 600
R406 401 - R550 100	R96 264 + 36% of the amount above R406 400
R550 101 - R701 300	R147 996 + 39% of the amount above R550 100
R701 301 and above	R206 964 + 41% of the amount above R701 300

## NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 29 FEBRUARY 2016

TAXABLE INCOME	RATES OF TAX
R0 - R181 900	+ 18% of each R1
R181 901 - R284 100	R32 742 + 26% of the amount above R181 900
R284 101 - R393 200	R59 314 + 31% of the amount above R284 100
R393 201 - R550 100	R93 135 + 36% of the amount above R393 200
R550 101 - R701 300	R149 619 + 39% of the amount above R550 100
R701 301 and above	R208 587 + 41% of the amount above R701 300

\* The tax rates applicable to special trusts are the same as those applicable to natural persons, except that the primary rebate and interest exemptions do not apply.

Tax rebates	2016	2017	2018
Primary	R13 257	R13 500	R13 635
Secondary (Persons 65 and older)	R7 407	R7 407	R7 479
Tertiary (Persons 75 and older)	R2 466	R2 466	R2 493

Tax thresholds	2016	2017	2018
Below age 65	R73 650	R75 000	R75 750
Age 65 to below 75	R114 800	R116 150	R117 300
Age 75 and over	R128 500	R129 850	R131 150

Interest Exemption	2016	2017	2018
Below age 65	R23 800	R23 800	R23 800
Age 65 & above	R34 500	R34 500	R34 500

# TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is an indirect tax on the acquisition of immovable property situated in South Africa. The following are the main provisions:

- ◆ It is calculated on the value of the immovable property (purchase price or market value whichever is the highest).
- ◆ It is payable within six months after the transaction is entered into.
- ◆ Where a registered VAT vendor purchases property from a non-vendor, the notional input tax is calculated by multiplying the tax fraction (presently 14/114) by the lesser of the consideration paid or market value.
- ◆ The acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation which owns residential property comprising more than 50% of its assets, is subject to transfer duty at the applicable rate.

## Transfer duty is calculated as follows:

R0 – R900 000	0%
R900 001 – R1 250 000	3% of the value over R900 000
R1 250 001 – R1 750 000	R10 500 + 6% of the value over R 1 250 000
R1 750 001 – R2 250 000	R40 500 + 8% of the value over R 1 750 000
R2 250 001 – R10 000 000	R80 500 + 11% of the value over R2 250 000
R10 000 001 +	R933 000 + 13% of the value over R10 000 000

The most notable exemptions from transfer duty are the following:

- ◆ If the purchase price/value is R900,000 or less.
- ◆ If the transaction is subject to VAT (i.e. where the seller is a VAT vendor).
- ◆ In the event of immovable property being transferred to a person (including a close corporation, company or trust), in terms of a Last Will and Testament, or as a result of intestate succession.
- ◆ The transfer of any property to a surviving spouse, or divorced person, who acquires sole ownership of the whole or any portion of property registered in the name of his or her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of the marriage or union.



# CAPITAL GAINS TAX & YOUR PROPERTY

## IMMOVABLE PROPERTY SUBJECT TO CGT

CGT is payable on disposal of immovable property to the extent that the capital gains arise after 1 October 2001. Persons are subject to CGT on the following immovable property:

- ◆ Residents: On all assets (including immovable) disposed of including overseas assets and immovable property.
- ◆ Non-residents: On immovable property or any right or interest in a property situated in South Africa.

**Note:** Any right or interest in a property includes a direct or indirect interest of at least 20% held alone or together with any connected person in the equity share capital of a company, where at least 80% of the value of the net assets of the company is, at the time of the disposal, attributable to immovable property in South Africa.

## CGT CALCULATION AND INCLUSION RATES

The capital gain or loss is the difference between the proceeds on disposal and the base cost of the property.

Events that trigger a disposal include a sale, donation, exchange, loss, death, vesting of property in a beneficiary of a trust and emigration.

Proceeds are equal to the amount received by the taxpayer in respect of the disposal.

The base cost is calculated as follows for property bought after 1 October 2001:

- ◆ The purchase price; plus
- ◆ Allowable capital expenditure.

The base cost is calculated as follows for a property bought before 1 October 2001:

- ◆ The valuation date value of the property on 1 October 2001; plus
- ◆ Allowable capital expenditure incurred after 1 October 2001.

The valuation date value is calculated as follows:

- ◆ The market value on 1/10/2001 as determined by a valuation; or
- ◆ 20% of the proceeds after deducting the allowable capital expenditure incurred after valuation date; or
- ◆ The time apportioned base cost, as determined by a formula.

Allowable capital expenditure includes the following:

- ♦ The cost of acquiring, creating or improving the asset (excluding any borrowing costs).
- ♦ The cost for valuation of the property for CGT purposes.
- ♦ Cost incurred in respect of disposal of the property (including sales commission, advertising, valuation costs, accounting and legal costs, removal cost etc.).

A capital gain or loss is calculated separately in respect of each asset disposed. Once determined, gains or losses are combined for that year of assessment and if it is:

- ♦ An assessed capital loss, it is carried forward to the following year; or
- ♦ A net capital gain, it is multiplied by the inclusion rate and included in taxable income.
- ♦ Annual exclusion of R40 000 capital gain or capital loss is granted to individuals and special trusts.
- ♦ Instead of the annual exclusion, the exclusion granted to individuals is R300 000 for the year of death.

The inclusion rates are as follows:

PERSON	2017	2018
Natural person and special trust	40%	40%
Company	80%*	80%*
Trust	80%	80%

\* The company inclusion rate applies for years of assessment starting after 1 March 2016.

## PRIMARY RESIDENCE EXCLUSION

When a primary residence is disposed of capital gains up to R2 million is exempt from CGT. The following are the main provisions relating to primary residences:

- ♦ The exemption is applicable to natural persons and special trusts.
- ♦ Only one residence at a time may be a primary residence of a person.
- ♦ The exemption is applicable if a person merely has an interest in the residence. As a result a share in a share block company and a usufruct may qualify (subject to further provisions).
- ♦ If the residence is held by more than one person as a primary residence an apportionment of the R2 million must be made in relation to their interest.
- ♦ An apportionment of the profit must be done if the person used the house as a primary residence for only part of the time it was owned. If a person was absent from the residence for less than 2 years as a result of the residence being offered for sale and vacated due to the intended acquisition of a new primary residence, the residence being erected on land acquired, the residence being accidentally rendered uninhabitable or the death of that person, it will not be seen as an absence from the residence.

- ◆ When the residence is used partially for residential and partially for business purposes an apportionment must be done.
- ◆ If a person is absent from his residence for a continuous period of 5 years or less and lets the premises during this time, the absence will be ignored if the person stayed in the residence for a period of at least one year before and after the period it was let, no other residence was treated as a primary residence during this period and the person was absent from the residence due to being absent from South Africa or was employed or engaged in a business in South Africa at a location more than 250 kilometers from the residence.
- ◆ Where the residence is more than 2 hectares in size, the exemption only applies to the gain made on the residence and 2 hectares, provided that the land is used mainly for domestic or private purposes together with the residence and the land is disposed of at the same time and to the same person who buys the residence (this land could be unconsolidated and next to the residence to qualify).

#### **WITHHOLDING TAX ON ACQUISITION OF PROPERTY FROM NON-RESIDENT**

The purchaser must withhold CGT on the purchase price where assets are purchased from a non-resident except where the amount payable by the purchaser is less than R2 million. The amount withheld is an advance tax in respect of the sellers' liability for CGT.

If the purchaser is a resident withholding tax must be paid within 14 days from the date on which the seller was paid and if the purchaser is a non-resident, within 28 days.

The following withholding tax rates are applicable and are based on the proceeds on disposal:

<b>NON-RESIDENT SELLER</b>	<b>2017</b>	<b>2018</b>
Natural person	5%	7.5%
Company	7.5%	10%
Trust	10%	15%

The seller may apply to SARS for a directive in order to reduce the amount to be withheld.

# THE DEED OF SALE

A written agreement must be drafted and signed. A verbal sale agreement in respect of immovable property is unenforceable and void in South Africa. The following are some important clauses to be borne in mind:

## DESCRIPTION OF THE PROPERTY AND PARTIES

The property and parties must be properly defined, so as to be capable of identification from the very wording used in the agreement.

## UNFAIR CONTRACT TERMS PROHIBITED

In terms of the Consumer Protection Act (68 of 2008), or “the CPA”, unfair contract terms are to be prohibited in deeds of sale to which the Act applies. Note that it is still ambiguous as to whether the CPA applies at all to residential property sales, as a seller in these “once off” private sales, may not be deemed to be a supplier selling goods in his/her ordinary course of business, as defined in the Act. Where the CPA does apply, each case will be determined on its merits as to what is deemed to be fair or unfair contract terms. Notwithstanding the above, the general view is that Section 49 of the CPA should be taken cognisance of in all cases– and provision should be made that any waiver of liability, assumption of an obligation, or waiver of a right is drawn specifically to the attention of both parties to the agreement in a conspicuous manner.

## PURCHASE PRICE & PAYMENT

- ◆ The price offered must be clearly stated, written both numerically and alphabetically.
- ◆ Sellers normally do and should require the payment of a deposit, which shows good faith, and the financial ability on the part of the purchaser and also provides security for the seller to cover its losses should the purchaser breach the agreement. As a purchaser, it is advisable to stipulate that the deposit be held in trust in an interest-bearing account, for the purchaser’s benefit pending transfer by the conveyancer (in terms of Section 78(2)(A) of the Attorneys Act).
- ◆ The balance of the purchase price is normally secured by a bank guarantee, usually coupled with a mortgage bond to be registered over the property. The seller’s conveyancer must make sure that guarantees are provided timeously, and the purchaser must ensure that the contract provides sufficient time to arrange finance and provide guarantees.

## OCCUPATIONAL INTEREST

Where occupation takes place on a particular date and transfer takes place after the date of occupation, occupational interest is paid at an agreed amount for the period of occupation until transfer. In most cases this is paid by the purchaser, who may take occupation prior to transfer being registered. The terms should be stipulated in the deed of sale. In some cases, it is the seller who is the one who has to stay on in the property he or she has sold and where transfer has been registered. In this case, the seller will be required to pay occupational interest to the purchaser. In general, on occupation, risk passes to the purchaser. Clauses dealing with occupational interest and risk (who is at risk while the purchaser is in occupation) should be included in the deed of sale.

## CERTIFICATES

The contract of sale is required to include clauses which deal with the Electrical, Beetle, Gas and Plumbing Certificate (where applicable).

## ELECTRIC FENCE REGULATIONS

Regulation 12 of the “Electrical Machinery Regulations” require that you have an “electric fence system certificate of compliance” if you install, add to, or alter an electric fence after 1 October 2012, or where there is a change of ownership of the premises on which the system exists, if the change of ownership takes place after 1 October 2012.

## DISCLOSURE OF LISTED INVASIVE SPECIES

The National Environmental Management Biodiversity Act (10 of 2004) requires that the seller of an immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of such immovable property, in writing, of the presence of listed invasive species on the property. The obligation and the duty to remove could be negotiated between the seller and the purchaser.

## THE FICA CLAUSE

### **Cash transactions and FICA:**

The Financial Intelligence Centre Act (38 of 2001) provides that Accountable institutions (AI's), which include attorneys and estate agents, (and is proposed to include professional accountants and auctioneers in the near future), are required to file a report with the Financial Intelligence Centre in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000.

In addition, the transferring attorney and the estate agent are required to request certain documents from both the seller and the purchaser, in compliance with FICA.

If applicable, the bank, and the bank's attorneys granting the bond may require the same documents as listed below. The documents required are as follows:

#### **Trust**

- ◆ Verification of all authorised Trustees and Beneficiaries (income tax, identity numbers and residential addresses)
- ◆ Letters of authority to act as Trustees
- ◆ Copy of the Trust Deed
- ◆ Resolution authorising Trustee to act on the Trust's behalf in the property transaction
- ◆ Income tax number of the Trust
- ◆ VAT number of the trust (where applicable)
- ◆ For bond registrations, financial institution may require financial statements and/or personal suretyship from the Trustees

#### **Company/Close Corporation**

- ◆ Verification of all Directors and shareholders/members (income tax, identity numbers and residential addresses)
- ◆ Memorandum of Incorporation/Founding Statement (and amended where applicable)
- ◆ CoR 39 Certificate (Certificate of Director amendments)
- ◆ Resolution authorising Director/Member to act on entity's behalf in the property transaction
- ◆ Income tax and VAT number of the company/CC (where applicable)
- ◆ For bond registrations, financial institution may require financial statements and/or personal suretyship from the shareholders/members

#### **Natural Person**

- ◆ Identity document(s)
- ◆ Income tax registration number (latest tax return submitted to SARS and VAT number – where applicable)
- ◆ Proof: marital status: marriage certificate, antenuptial contract, divorce orders
- ◆ Consent papers (where applicable)
- ◆ Either a utility bill (water or lights), or a levy account that is addressed to the natural person at his or her residential address

#### **Estate agent**

- ◆ VAT details, income tax details of agency and agent involved in the transaction

*These lists are not exhaustive and are intended to give an idea of the required documentation for FICA compliance.*

# HOME LOANS AND MORTGAGE BONDS

## HOME LOAN AND MORTGAGE DISCLOSURE ACT (63 OF 2000)

A “home loan” is defined as a loan or advance by a financial institution to a person for purposes of constructing, purchasing, renovating or improving a home against security of a mortgage bond or other accepted form of security.

When mortgage finance is necessary, a suspensive condition will be included in the Offer to Purchase setting out the specific terms under which the finance must be approved and these conditions must be fulfilled on or before the time limit stated in the contract, failing which the contract will lapse and be null and void and cannot be reinstated, even with the agreement of the parties by means of signing an Addendum. A lapsed contract cannot be reinstated. Due care should be taken to properly understand the conditions relating to the Bond approval as once the mortgage bond condition and any other suspensive conditions have been fulfilled a binding, enforceable contract comes into existence. Financial institutions reserve the right to withdraw the approval should any new or previously undisclosed facts emerge, or should there be a change in circumstances which may prejudice the rights of the financial institution.

Taking into account the increase in the prime interest rate quoted by the financial institutions, the facility in terms of the mortgage bond approval may be withdrawn in the event that the banks find that their rights are prejudiced due to an increase in the bond rate. The withdrawal of the approval does not affect the Seller’s rights to argue that the transfer of the property should proceed as the suspensive conditions had been fulfilled, which would place the purchaser in the position that the transfer would have to proceed on a cash basis.

## THE HOUSING CONSUMERS PROTECTION MEASURES ACT (95 OF 1998)

In terms of Section 18, no financial institution may advance mortgage bond finance to enable the consumer to purchase or build a home unless the financial institution is satisfied that the home builder is registered in terms of the Act and that the home is or will be enrolled with the National Home Builders Registration Council. The financial institution will impose a requirement that the necessary NHBRC Certificate be obtained prior to transfer of the property when the building on the property is less than five years old.

# THE CONSUMER PROTECTION ACT

Please note that the information contained in this section is not exhaustive and serves as a brief overview of the CPA as it specifically relates to property related transactions. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify. You are strongly advised to contact our offices for further advice or consultation on this topic.

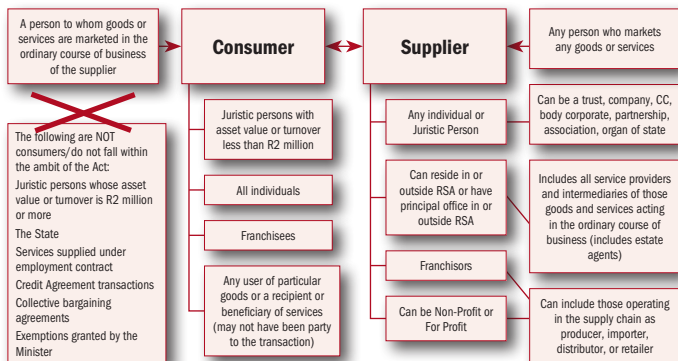
## Scope of the Act:

The CPA regulates the activities of suppliers and creates rights for consumers in the event that they fall within the ambit and scope of the Act. The CPA applies to every transaction occurring within SA, and covers both goods or services delivered or rendered “in the ordinary course of business” and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:

- ◆ The promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted), the performance of the service and the supply of goods, the goods and services themselves after the transaction is completed, and the goods which form the subject of an exempted transaction.

The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister.

## Summary of Consumer/Supplier:





## SALE AND PURCHASE OF IMMOVABLE PROPERTY

- ◆ Where the supplier is a seller of property (who sells property as his/her ordinary course of business), and the purchaser is an individual or a juristic body whose turnover or asset value is less than R2 million, the Act will have application.
- ◆ The basic test is whether the consumer purchases the property from the supplier in the course of the latter's "ordinary course of business". This means that it is unlikely that the CPA will apply to property sales in the average "one-off" private sale situation – it is aimed more at "commercial" sales – by property developers, builders, speculators, and other property dealers, extending to transactions where people buy and sell property on a continuous basis. In such cases, the deed of sale and actual transfer of property into the name of the purchaser would fall under the provisions of the CPA (where the purchaser qualifies as a consumer in terms of the Act).

### **Definition of "goods" includes a legal interest in land or other immovable property:**

- ◆ The definition of "goods" in the CPA is defined to include a legal interest in land or any other immovable property, other than an interest that falls within the definition of "services". In other words, the definition of "goods" includes the sale and purchase of immovable property. Note: whether the CPA applies to a once off sale of residential property has not yet been tested in our Courts, as it will depend on who is selling the property, and whether such seller falls within the definition of supplier in terms of the Act.

## **REMEDIES FOR CONSUMERS (AS PURCHASERS) PROVIDED BY THE ACT:**

### **Right to fair and honest dealing with consumers – Sections 40–42, 44**

The CPA deals with unconscionable conduct, false, misleading or deceptive representations (whether by word or conduct), fraudulent schemes or offers, and the consumers right to assume a supplier is entitled to sell goods. Consumers (purchasers) are entitled to fair and reasonable marketing. "Market" is defined in the CPA as the "promotion and supply of any goods or services". All negotiations and representations made by sellers, estate agents, property developers, builders and other property dealers – to purchasers, must comply with the Act, so as to ensure that purchasers are treated lawfully and fairly.

### **Cooling off period – Section 16**

Consumers are afforded a period of five business days to rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing. Direct marketing includes telephone calls, electronic communications and cold calling – as opposed to ordinary marketing-which involves printed brochures, print media and websites.

This section may have the effect of allowing a cooling-off period when a property is purchased due to direct marketing, even if it is sold for more than R250 000 (i.e this

cooling off right is in addition to the cooling off period in terms of Section 29A of the Alienation of Land Act, which applies where the value of the property is less than R250 000, and the purchaser is an individual).

### **Disclosure and Information – Section 22–28**

Consumers (purchasers/tenants where applicable) are entitled to information in plain and understandable language. Purchasers must understand exactly what they are buying. The purchaser has the right to receive express notice of any term in an agreement which limits the risk or liability of the provider, or of any term which constitutes an assumption of risk or liability by the consumer.

Certain information is required to be disclosed by intermediaries, agents and/or estate agents in terms of Regulation 9, such as their full names, identity number, a description of the exact service to be provided and fees to be earned.

### **Consumer agreements – Sections 48–52**

Unfair, unreasonable or unjust contract terms are not allowed in deeds of sale. These agreements will be scrutinised – the meaning and effect of all applicable terms and conditions of the agreement are required to be explained, and no terms or conditions that are deemed unfair for the consumer will be able to be inserted.

### **Right to fair value, good quality and safety – Sections 53–60**

#### **A. Right to fair value**

Sale prices could be scrutinised for reasonableness. The price should always be displayed when the property is being advertised for sale.

#### **B. Right to good quality and safety – Sections 55–56**

Section 55(2): Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that are reasonably suitable for the purposes for which they are generally intended, are of good quality, in good working order and free of any defects, and will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put, and to all the surrounding circumstances of their supply. In other words, where the CPA applies, it would seem that the purchaser has a right to return goods (to require the seller to take re-transfer of the property) if any of the requirements listed in (a) to (c) are not met. Where the sale agreement expressly lists any patent (visible) defects, latent (unknown) defects, or specifies the exact condition of the property, the seller will most likely be protected. Such a clause must be expressly accepted by the purchaser. The purchaser must have expressly agreed to accept the goods (property) in that condition or knowingly acted in a manner consistent with accepting the goods in that condition [Section 55(6)].

## **Right to return defective goods – Section 56(2)**

Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55.

Where the CPA applies, the purchaser has the right to return the goods to the seller –without penalty and at the seller's risk and expense – within six months of delivery (registration of transfer at the deeds office). The purchaser has the choice as to whether the seller will be required to refund the full purchase price or repair the 'goods' (where applicable).

## **Effect of the CPA on the Voetstoets clause**

There are conflicting views on the likely effect of the CPA on the traditional voetstoets clause. Certainly, where the Act applies, traditional voetstoets clauses that breach the consumer's rights as per Section 55 of the Act will no longer be applicable. Property speculators, developers, builders, estate agents, and attorneys involved in the drafting of the contract of sale will be required to comply with Sections 55–56. However it is also likely that the exception in Section 55(6) will relate to the voetstoets clause in that when the purchaser signs the deed of sale, and (s)he acknowledges that (s)he has been expressly informed that the property is sold in the specific condition that (s)he sees it, and which condition is listed in detail in the contract itself, and is acquainted with the property's condition, nature and extent, land use planning and building plan approval, accepts it as is, then the exception should apply. As per Section 49 of the CPA, such provision must have been drawn to the attention of the consumer and in a conspicuous manner, that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances, and before the earlier of the time at which the consumer enters into the transaction or agreement, or is required or expected to offer consideration for the transaction or agreement.

## **LEASES AND LANDLORDS**

'Lease' is not defined in the CPA, however, 'services' is defined as including the provision of accommodation or sustenance, access to or use of any premises or other property in terms of a rental. 'Rental' means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered to or at the direction of the consumer, or the right to use any premises or other property is granted to or at the direction of the consumer, excluding a lease within the meaning of the National Credit Act.

### **Landlord as Supplier/Tenant as Consumer:**

- ♦ The Act applies where the landlord is in the business of letting properties, and the tenant meets the criteria of 'consumer' – being an individual or juristic body whose turnover or asset value is less than R2 million.

- ◆ The question arises as to what is meant by “the landlord being in the business of letting properties” – one view is that it includes the individual property owner who earns rental income from a property irrespective of what he or she does for a living. Another view is that the landlord must be a serial property renter before (s)he falls within the ambit of the Act. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify.

### **Some sections in the Act which will apply to lease agreements:**

- ◆ Sections 22 and 40 of the Act state that it is the inherent duty of the landlord to ensure the tenant understands the lease agreement, and to provide full disclosure and information.
- ◆ The tenant is entitled to information in plain and understandable language.
- ◆ Most lease agreements are for a fixed period. Section 14 provides that the tenant may arbitrarily terminate the lease by providing twenty working days written notice to the landlord (for a lease entered into after 1 April 2011).
- ◆ Where the CPA applies, a landlord can only terminate the lease if there was a material breach and the tenant has not remedied the same within the specified period provided for in the lease agreement.
- ◆ Upon cancellation by the tenant, the landlord may impose a reasonable cancellation penalty.
- ◆ Section 14 however does not apply to transactions between juristic persons, regardless of their annual turnover or asset value.
- ◆ Fixed lease agreements under the Act have a maximum duration of twenty-four months. After expiry of the agreement, it will continue on a month to month basis unless a new agreement is signed. Should the landlord wish to terminate the agreement upon its expiry, (s)he must notify the tenant in writing not more than eighty but not less than forty business days (before expiration of the agreement) of its looming expiry. If the agreement is to be renewed, a notice of any material changes that would apply would need to be provided to the tenant by the landlord within the same time frame.
- ◆ In summary, if two individuals enter into a lease agreement (commercial or residential), the CPA will apply, including Section 14. If an individual as landlord and a juristic person with assets or turnover of less than R2million, as tenant, enter into a lease agreement, the CPA will apply, including Section 14. However, if two juristic persons, regardless of assets or turnover value, enter into a lease agreement, Section 14 of the Act will not apply (the remaining provisions of the Act may apply where both parties are juristic persons and the tenant as juristic person has assets or turnover value of less than R2 million). Note that where the tenant as juristic person has assets or turnover over R2 million, the CPA will not apply to the lease agreement at all.

## PURCHASING VIA LEGAL ENTITIES – PRO'S & CON'S

### COMPANY

#### ADVANTAGES

1. CC, trust, company can be shareholders
2. Strictly controlled by legislation Companies Act (71 of 2008) as amended
3. Can have more than 10 shareholders
4. Has greater image value than a CC or a trust as a business vehicle
5. Relatively easy sale of interest through a sale of shares

6. Shareholders agreement can neatly regulate the relationship between the shareholders (subject to the MOI and Act)
7. A bond may be registered subject to the solvency and liquidity requirements of Section 44 having been met

#### DISADVANTAGES

1. The costs of annual audit (where applicable)
2. Complex legislation to comply with

### CLOSE CORPORATION

#### ADVANTAGES

1. Management is also represented by members who hold interest in the CC

#### DISADVANTAGES

1. Membership limited to 10
2. From 1 May 2011, no new CC's may be registered

### TRUST

#### ADVANTAGES

1. The trust is treated as an entity separate from the individuals
2. Assets don't form part of the insolvent estate in the event of sequestration
3. Strict controls – Trustees accountable to Master of the High Court
4. Special trusts formed for mentally ill or seriously disabled, will be allowed CGT exemption if primary residence (and meets other requirements to qualify)
5. Special trusts – taxed at individual rates

6. Trust deed can be set up so as to determine the manner in which Trustee administers the fixed property and the Trustee is dutybound to obey these wishes

#### DISADVANTAGES

1. Cannot be sold as an entity
2. The beneficiaries normally have discretionary rights which are not assets that can be sold such as shares
3. Trustees cannot act until Letters of Authority have been issued

### APPLICABLE TO ALL ENTITIES

#### ADVANTAGES

1. Separate legal personality (CC's and Companies)
2. If shares held in trust, may protect the shares as long as not offered as security against a loan
3. Shares/Members interests can be sold
4. Continues to exist as an entity even in event of death or resignation of member/ shareholder/director/trustee
5. Need not be in existence at time of signing agreement (CC's and Companies)

#### DISADVANTAGES

1. CGT – where property is held in Company/CC, ordinary trust, and special testamentary trust, no primary residence exemption allowed
2. From 1 March 2017 dividends tax levied on the shareholder at a rate of 20% on the amount of any dividend paid by a company (subject to certain exemptions). The tax is to be withheld by the company paying the taxable dividends and paid across to SARS
3. Transfer of members interest, shares – subject to Securities Transfer Tax at a rate of 0.25% on the transfer of listed or unlisted securities

## THE PROTECTION OF PERSONAL INFORMATION ACT

- ◆ The Protection of Personal Information Act (4 of 2013), otherwise known as POPI, promotes the protection of personal information by public and private bodies.
- ◆ Estate agents, intermediaries, property companies and other institutions conducting business in the property sector, are required to comply with the Regulations of the Act, which includes obtaining approval from the consumer or client before any of their private information is used or distributed, and collecting and storing client information in such a way that only individuals with the necessary authorisation are able to access it.
- ◆ The Information Regulator and its members were appointed in December 2016. The Regulator is responsible for education, monitoring, enforcement and compliance, as well as the handling of complaints, performing research and facilitating cross-border co-operation.
- ◆ The commencement date of the Act has not yet been proclaimed. It is anticipated to commence by no later than May 2017. There will be a one year grace period from the date of commencement, following which, POPI will be enforced.

## TAX IMPLICATIONS ON THE LEASING OF PROPERTY

### **For the landlord:**

- ◆ All income received from rental of a property is of a revenue nature and has to be declared as part of a landlord's gross income.
- ◆ Deductions are available, such as: interest on bond repayments, repairs and maintenance, municipal rates and taxes, letting agent's fees (if applicable), and expenses not recovered from the tenant, such as security, utilities or garden services. In the case of a sectional title scheme, the levy is also deductible.
- ◆ In order for the deductions to be allowed the expenditure must have been actually incurred in the production of income and not be of a capital nature. The landlord must effectively be able to satisfy SARS that he is carrying on a bona fide trade through the rental of his property.
- ◆ The cost of improvements, reconstructions or additions to the property cannot be deducted, as these expenses are of a capital nature. Improvements made to leasehold property in terms of a lease agreement by the tenant must be included in the income of the landlord. Either the stipulated amount or a fair and reasonable value will be included. There may be relief available for the landlord, in terms of Section 11(h) of the Income Tax Act.

**For the tenant:**

- ◆ The tenant can claim the rental expense as a deduction for tax purposes if the rental payment or expenditure was actually incurred in the production of income.
- ◆ If improvements are made to leasehold property in terms of a lease agreement by the tenant, the tenant may deduct such expenditure over the period of the initial lease or 25 years (whichever is shorter).

## THE RENTAL HOUSING ACT

The Rental Housing Act (50 of 1999), as amended, aims to regulate the relationship between tenants and landlords by setting out general requirements relating to leases, laying down general principles and governing conflict resolution. The Rental Housing Tribunal's function is to ensure that unfair practices between landlords and tenants are eliminated and hence it interprets both the Act and the Procedural and Unfair Practice Regulations, where applicable, in its deliberations. The service is free to both tenants and landlords. A lease will be deemed to include a number of terms, which cannot be waived by either party, such as:

- ◆ That the landlord must furnish the tenant with written receipts for all payments received by the landlord from the tenant.
- ◆ If on the expiration of the lease, the tenant remains in the dwelling with the express or tacit consent of the landlord, the landlord and tenant are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.
- ◆ A deposit must be invested by the landlord in an interest bearing account, such interest not to be less than the rate applicable to a savings account. During the period of the lease, the tenant is entitled to request proof from the landlord in respect of interest accrued.
- ◆ Leases must be reduced to writing. The onus will be on the landlord to make sure it is in writing.
- ◆ A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant, and consent to sub-let may not be unreasonably withheld.
- ◆ A landlord must provide a tenant with a dwelling that is fit and suitable to live in, maintain the existing structure of the dwelling and facilitate the provision of utilities to the dwelling.

Due to the limitations in the length of this guide, all of the provisions of the Act (as amended), and Regulations cannot be included in this guide.

## SECTIONAL TITLE AND COMMUNITY SCHEMES

On the 7th October 2016, two new pieces of legislation were signed into law, which affect Sectional Title and Community Schemes, and which complement the existing Sectional Titles Act (no 95 of 1986).

They are the Sectional Titles Schemes Management Act (no 8 of 2011) or “STSMa” and The Community Schemes Ombud Service Act (no 9 of 2011), or “CSOSA”, and regulations.

The legislation aims primarily to protect owners in sectional title and community schemes and provides for new management procedures and dispute resolution processes through the Ombud Service. New Rules have been prescribed, and any contravention thereof may have serious consequences.

The STSMa applies to Sectional Title Schemes and provides for the establishment of bodies corporate to manage and regulate sections and common property, and to apply rules applicable to the scheme.

The CSOSA applies to community schemes, which include Sectional Titles, as well as other community schemes, such as homeowner’s associations. The CSOSA provides for dispute resolution mechanisms for these schemes and associations. It provides for owner protection by setting out the duties of scheme executives (which include Trustees of Sectional Title Schemes, the Board of Directors of a Share Block Company, the Management Association of any housing scheme for retired persons). The CSOSA also provides for the enforcement of good governance, which includes the requirement for lodgement by all community schemes of scheme governance documentation with the CSOSA.

Attorneys, Estate Agents, Trustees of Sectional Title Schemes, Directors of Share Block Companies, Members of the Management Associations of housing schemes for retired persons, Owners, Developers and Managing Agents are required to know the critical aspects of the CSOSA. Trustees, Owners, Developers and Managing agents of Sectional Title Schemes are required to have knowledge and apply the provisions of the new STSMa.



## THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT 8 OF 2011, AND REGULATIONS

The following persons/groups of persons involved in Sectional Title Schemes are defined in the STSMA as follows:

<b>The Body Corporate</b>	
<b>Developer</b>	A person who is the registered owner of land situated within the area of jurisdiction of a local municipality, on which is situated or be erected a building or buildings which he or she has divided or proposes to divide into two or more sections in terms of a scheme, or his or her successor in title and includes for the purposes of rebuilding any building that is deemed to have been destroyed as contemplated in section 17, the body corporate concerned.
<b>Owner</b>	In relation to a unit or a section or an undivided share in the common property forming part of such unit, means the person in whose name the unit is registered at a deeds registry in terms of the Sectional Titles Act (and includes, inter alia, the executor of a deceased estate of a deceased owner).
<b>Trustee</b>	All the members (owners) are trustees from the establishment of the body corporate until the end of the first general meeting. If a body corporate consists of less than 4 members who are owners of primary sections, each member or his or her representative recognised by law, is considered to be a trustee without election to office. If a body corporate consists of more than 4 members who are owners of primary sections, they must from time to time determine the number of trustees to be elected in terms of the Rules.

The executives of a community scheme, including the body corporate of a Sectional Title Scheme, may appoint Managing Agents to provide the scheme with management services to the community scheme for reward.

Some of the more important, and newly introduced provisions of the STSMA, Regulations and prescribed Rules include the following:

### THE BODY CORPORATE

The body corporate of a Sectional Title scheme is automatically established as soon as any person (other than the developer) becomes an owner of a unit in a scheme. At such time the developer and such persons are the members of the body corporate, and any person who thereafter becomes an owner of a unit in that scheme becomes a member. The developer ceases to be a member when he or she ceases to have a share in the common property.

The body corporate is responsible for the enforcement of the Rules of the scheme, the control, administration and management of the common property for the benefit of all Owners. Section 3 of the STSMA sets out the functions of the body corporate. Some of the more important **(and newly added)** functions are:

**Section 3(1)(a): To establish and maintain an Administration Fund**

An Administrative Fund must be used to fund the operating expenses of the body corporate for a particular financial year. These estimated annual operating costs would, inter alia, include the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs), the payment of rates and taxes and other local municipality charges.

**Section 3(1)(b): To establish and maintain a Reserve Fund**

Every development and its Trustees are required to establish and maintain a Reserve Fund, in such amounts as are reasonably sufficient to cover the cost of *future* maintenance and repair of common property, but not less than such amounts as may be prescribed by the Minister. The Trustees need to include contributions to this fund when preparing the ensuing financial year's budget, and the minimum amount must be determined according to a prescribed formula (set out in Regulation 2).

**Section 3(1) (c) to (f): Require owners to contribute**

The body corporate must require the owners wherever necessary to make contributions to the Administration and Reserve Funds, and to raise these amounts by levying contributions on the owners in proportion to the quotas of their respective sections.

**Section 3(1) (h): Insure buildings**

The body corporate must insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed.

The body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting.

**Section 3(1) (o): Notify Chief Ombud of service address**

The Chief Ombud, local municipality, and local registrar of deeds need to have the domicile of the community scheme registered, so that in events of cases being brought against bodies corporate by owners or vice versa, there is one address by which to serve notices. This is also to simplify matters as all three bodies will have the same address registered.

## TEN-YEAR REPAIR, REPLACEMENT AND MAINTENANCE PLAN

A body corporate or the Trustees are required to prepare a written, ten-year repair, replacement and maintenance plan for the common property, setting out a number of items

including major capital items expected to require maintenance, repair and replacement within the next 10 years, the estimated cost of such maintenance, repair and replacement and the expected life of those items. This plan is used to ascertain Reserve Fund Contributions.

## MEETINGS OF THE BODY CORPORATE

The developer must convene a meeting of the members of the body corporate not more than 60 days after the establishment of the body corporate, and is required to furnish the members with information and documentation regarding the scheme at such meeting (as are listed in section 2(8)(c) of the STSMA).

Section 6 of the STSMA sets out the requirements and procedures for body corporate meetings, and, inter alia, provides that body corporate meetings must take place at a time and in such form as determined by the body corporate. Where a special or unanimous resolution will be taken, 30 days' prior notice must be given to all the members in the prescribed form.

Votes are calculated in value, or in number, as is set out in section 6(6) and (7).

### **A person may not act as a proxy for more than 2 members of the body corporate.**

A body corporate or an owner who is unable to obtain a special or unanimous resolution may approach the Chief Ombud for relief.

## OWNER MEETINGS

The body corporate must hold an AGM within 4 months of the end of each financial year, unless this requirement is waived.

Business must not be transacted at any general meeting unless a quorum is present or represented, and a quorum for a general meeting is constituted –

- ◆ for a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value.
- ◆ for any other scheme, by members entitled to vote and holding one third of the total votes of members in value, provided that at least two persons must be present unless all the sections in the scheme are registered in the name of one person, and provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.
- ◆ For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.

## Quotas

Section 11 of the STSMA provides, inter alia, for the effect of quotas and the variation thereof.

Quotas affect the proportion to which the owner of a section must make contributions to the Reserve Fund and the Administration Fund. Quotas also determine the value of the vote of the owner of the section (when a vote is to be reckoned in value), and the undivided share in the common property of the owner of the section. The members of the body corporate may not make Rules by which a different value is attached to the vote, until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme.

## SOME MORE NEW PRESCRIBED MANAGEMENT RULES

**Management Rule 21(2):** the body corporate is not allowed to make loans from the body corporate funds without the authority of a unanimous resolution.

**Management Rule 25:** all changes made to the levy amounts (which usually occurs annually) are to be certified in writing, and the members notified of the amount within 14 days after the approval of the budget.

**Management Rule 27:** the body corporate is required to keep track of track of occupancy changes, and the details of the trustees, members and tenants (full names, identity numbers, addresses, and contact details).

## CONDUCT RULES OF SECTIONAL TITLE SCHEMES

These include Rules relating to the keeping of animals, reptiles and birds, refuse and waste disposal, vehicles, damage to common property, storage of flammable materials and eradication of pests. Guide dogs are allowed, and the consent of the trustees is automatically assumed.

Where vehicles are parked on any part of the common property that is other than a parking bay allocated to the section (other than in an emergency), the consent of the trustees' is required. There is no longer a provision that illegally parked cars may be towed away.

## TRUSTEES OF THE BODY CORPORATE

The functions and powers of the body corporate must, (subject to the provisions of the Act, the Rules and any restriction imposed or direction given at a general meeting of the owners of sections), be performed and exercised by the trustees of the body corporate, holding office in terms of the Rules.

The rules set out the requirements for office and disqualification, nomination, election and replacement, trustee meetings and decisions, quorum requirements and voting at trustee

meetings. At a trustee meeting, 50% of the trustees by number, but not less than two, form a quorum. Any member of a body corporate may attend a Trustees meeting.

The Trustees stand in a **fiduciary relationship** to the body corporate. He or she must avoid any material conflict between his or her own interests and those of the body corporate. A trustee who acts in breach of this duty is liable to the body corporate for any loss suffered by the body corporate as a result thereof or any economic benefit received by the trustee by reason thereof.

## GOVERNANCE DOCUMENTATION REQUIREMENTS FOR SECTIONAL TITLE SCHEMES

Sectional Title schemes are regulated and managed by means of Management and Conduct Rules, subject to the STSMA (as prescribed in Regulation 6, Annexures 1 and 2).

The Management Rules may be amended, added to, repealed, or substituted, as follows:

<b>By the developer (when applying to open a sectional title register)</b>	<b>By the body corporate</b>
subject to the approval of the Chief Ombud, and provided they are not inconsistent with any other Management Rule,	by <b>unanimous resolution</b> provided that at such time there are owners (other than the developer) of at least 30% of the units in the scheme (subject to certain exceptions).

Conduct Rules may be substituted, added to, amended or repealed by **special resolution** of the body corporate (provided that such Conduct Rules may not be irreconcilable with any prescribed Management Rule).

<b>Unanimous resolution</b>	<b>Special resolution</b>
<p>Means a resolution –</p> <p>(a) passed unanimously by all the members of the body corporate at a meeting at which (i) at least 80% calculated both in value and in number, of the votes of all of the members of a body corporate are present or represented, and (ii) all the members who cast their votes do so in favour of the resolution, OR</p> <p>(b) agreed to in writing by all the members of the body corporate.</p>	<p>Means a resolution –</p> <p>(a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting, OR</p> <p>(b) agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.</p>

The body corporate must lodge a notification of an amendment to the scheme's Management and/or Conduct Rules as soon as reasonably possible, with the Ombud Service – but not later than 10 days after the date of the relevant resolution of the body corporate, and must compile and keep a complete set of all Management and Conduct Rules.

The Chief Ombud must approve and issue a certificate for any Rules that may be substituted, added to, or changed. The Certificate must be lodged at the Registrar of Deeds.

The body corporate, or the elected Trustees, are responsible for making governance documentation, financial records, budgets and reports (as set out in Rule 26 and 27) available to a member, a registered bondholder, or a person authorised in writing by a member or registered bondholder, on receiving a written request for such documentation.

The Rules and Regulations of the scheme must be given to people who are new to the scheme, whether owners or tenants and must be available in all meetings held.

The Ombud Service will be responsible to ensure that Rules comply with the requirements of the STSMA and that they will be reasonable and apply equally to all owners of units.

All other community schemes (Share Block company's, home owner's associations etc.) will have their own rules, own constitutions, Memorandum of Incorporation (whichever is applicable), however these also have to be lodged with and approved by the Chief Ombud.

## NEW RELIEF AVAILABLE FOR AGGRIEVED PERSONS

An aggrieved person who is dissatisfied with the management, or any other aspect of the Sectional Title Scheme, may:

- ♦ refer any dispute to the Chief Ombud in terms of the CSOSA
- ♦ apply for the appointment of an Administrator in terms of Section 16 of the STSMA, as follows:

### **Appointment of administrators**

A body corporate, a local municipality, a judgment creditor of the body corporate or any owner or other person having a registered real right in or over a unit may apply to a Magistrate's Court for the appointment of a suitably qualified and independent person to serve as the administrator of the body corporate, where, a Magistrate's Court on hearing the application referred to above, finds –

- (i) evidence of serious financial or administrative mismanagement of the body corporate; and
- (ii) that there is a reasonable probability that, if it is placed under administration, the body corporate will be able to meet its obligations and be managed in accordance with the requirements of the Act, the Magistrate's Court may appoint an administrator for a fixed period and on such terms and conditions as it deems fit.

The remuneration and expenses of the administrator are administrative expenses contemplated in section 3(1)(a) (Administration Fund).

## **THE COMMUNITY SCHEMES OMBUD SERVICE ACT 9 OF 2011, AND REGULATIONS**

The CSOSA applies to “community schemes” which are defined as shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owners’ association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-operatives Act (no 14 of 2005).

### **GOVERNANCE AND CONTROL OF COMMUNITY SCHEMES**

CSOS establishes an **Ombud Service**, with its main functions as follows:

- ◆ To regulate, monitor and control the quality of all sectional title and other scheme governance documentation.
- ◆ To develop and provide a dispute resolution service.
- ◆ To provide training for conciliators, adjudicators and other employees of the service.
- ◆ To take custody of, preserve and provide public access electronically, or by other means to sectional title scheme governance documentation and such other scheme governance documents.
- ◆ provide education and documentation to owners, occupiers, executive committees as regards their rights and obligations.

### **APPLICATIONS FOR RELIEF TO THE CSOS**

Any person may make an application to CSOS for dispute resolution, if such person is a party to or affected materially by a dispute (the relief is therefore available to persons such as tenants, owners, trustees etc.). Such an application must be made in the prescribed manner and lodged with the Ombud Service, and accompanied by the prescribed application fee. Section 39 and 40 set out the grounds on which such an application may be made to the Ombud Service, which inter alia, includes, matters in respect of financial issues, behavioural issues, scheme governance issues, meetings, management services, any works pertaining to private areas and common areas, and any general and other issues.

### **CONCILIATION**

On acceptance of an application and after receipt of any submissions from affected persons, or responses from the applicant, if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the dispute, he must refer the matter to conciliation.

## REFERRAL TO ADJUDICATOR

Should conciliation fail, the Ombud must refer the application, together with any submissions and responses thereto, to an adjudicator.

The applicant and any other relevant person are not entitled to legal representation during the adjudication process, unless the adjudicator and all other parties consent, or the adjudicator concludes that it would be unreasonable to expect the party to deal with the adjudication without legal representation, given the complexity of the matter and/or the nature of the questions of law raised by the dispute.

The adjudicator may make an order to dismiss the application, or grant or refuse each part of the relief sought by the applicant, or an order requiring a person to act, or to refrain from acting in a specified way.

The adjudicator's order may be enforced by a Magistrate's Court, if the order is for the payment of an amount of money or any other relief that is within the jurisdiction of the Magistrate's Court. Should the order be beyond the Magistrate's Court's jurisdiction, the order may be enforced as if it was a judgement of the High Court.

## RIGHT OF APPEAL

Section 57 provides that an applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.

## OMBUD SERVICE FEES

The fee for applying to the Ombud to resolve a dispute is just R50, and once it reaches adjudication, R100 is payable.

If the adjudication is outsourced by CSOS, the private adjudicator will be bound by a daily fee prescribed by CSOS. Section 53(3) of the CSOS Act sets out the maximum amount of costs an adjudicator may order.

The Regulations state that where a person's monthly net household (gross income less PAYE) income is below R5 500 are entitled to a 100% waiver of application and adjudication fees.

## SCHEME LEVIES

The CSOS is also funded by a small levy attached to every community scheme's levy payment, payable on a quarterly basis, commencing January 2017.



The Minister, may, by notice in the Government Gazette, set and amend a maximum amount of the levy for a community scheme in each category, an applicable levy factor in the form of a decimal fraction for each of the various stated categories of scheme, and the rates of discount or waivers of levies and the details for qualifications for such discounts or waivers.

The levy is calculated subject to any applicable maximum amount, discount or waiver, according to the following formula:

**The lesser of R40 or 2% of the amount by which the monthly levy charged by the Scheme exceeds R500**

Amounts paid are therefore proportionate to the levy amounts paid.

Each scheme must calculate CSOS levy due by each owner on a monthly basis, and pay across to the CSOS on a quarterly basis.

The following Table, which is set out in the Regulations, gives illustrative values of the prescribed monthly levy payable:

Monthly levy charged by the community schemes	Monthly CSOS Levy payable	Monthly levy charged by the community schemes	Monthly CSOS Levy payable	Monthly levy charged by the community schemes	Monthly CSOS Levy payable
R0 – R500	R0.00	R900	R8.00	R1 750	R25.00
R600	R2.00	R1 000	R10.00	R2 000	R30.00
R700	R4.00	R1 250	R15.00	R2 250	R35.00
R800	R6.00	R1 500	R20.00	R2 600	R40.00

Should a community scheme, or person, fail to pay a levy or amount due to the CSOS on the date due and payable, interest on that amount is payable for the period it remains outstanding at a rate prescribed by the National Credit Act (no. 34 of 2005), as amended.

#### **ANNUAL RETURNS, ANNUAL FINANCIAL STATEMENTS, CERTIFICATES AND FORMS**

Every community scheme must file an annual return, and a copy of its annual financial statements with the Ombud Service, in the prescribed form, within 4 months after the end of the community scheme's financial year.

## PROMOTION OF GOOD GOVERNANCE, TRAINING AND EDUCATION

### **Duties of Scheme Executives**

A scheme executive (which includes Trustees of a Sectional Title body corporate, the board of directors of a share block company, and the management association of any housing scheme for retirement persons), must inform and educate himself about the community scheme, its affairs and activities and the legislation and governance documentation, as well as obtain sufficient information and advice about all matters to be decided by scheme executives.

He or she must attend all meetings of the scheme executives and attend the Annual General Meeting (unless excused by the Chairperson), exercise due diligence and act in a fiduciary capacity at all times.

### **Fidelity Insurance**

Every community scheme is obliged to obtain fidelity insurance and insure against the risk of loss of money belonging to the scheme, sustained as a result of any act of fraud or dishonesty committed by any "insurable person", which means a scheme executive, an employee or agent of a community scheme, who has control over the money of a community scheme, a managing agent, and a contractor, employee or other person acting on behalf of or under the direction of a managing agent, who in the normal course of the community scheme's affairs has access to or control over the monies of the community scheme.

### **Quality and Form of governance documentation**

The Chief Ombud may, by written notice to the community scheme, require that:

- ◆ The scheme governance documentation be lodged with the Ombud Service within 90 days after the establishment of the community scheme or within 90 days after the coming into operation of the Regulations (1 October 2016).
- ◆ Should any amendments to the documentation be made, the governance documentation will need to be consolidated so as to produce an updated document.
- ◆ Scheme governance documentation includes any rules, regulations, articles, constitution, terms, conditions or other provisions that control the administration or occupation of private areas and common areas in a community scheme.

## OFFENCES AND PENALTIES

CSOS aims to keep Trustees and members of the body corporate in line, in that it provides that any person is guilty of an offence, and is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment, where he or she contravenes the Act. The list of offences to which this provision applies are set out in Section 34.

# COSTS OF BUYING & SELLING PROPERTY

## TYPICAL COSTS OF BUYING

### PURCHASE PRICE

- ◆ A deposit (usually 10% of the gross purchase price) to the estate agent or conveyancer payable usually on signature of the deed of sale by both parties or within 7 to 14 days from signature (if applicable).
- ◆ The balance of the purchase price is lodged with the conveyancer prior to transfer, or is secured by way of a bank guarantee. Over and above the purchase price, the purchaser should have the cash available to cover the transfer costs (if this is not included in the bond) and the bond registration costs as follows:

### TRANSFER COSTS

- ◆ **Transfer duty** – calculated on a sliding scale between 0% to 13% of the gross purchase price, is payable to SARS. **(R0 to R900 000 is exempt).**
- ◆ If the seller is a VAT vendor, then VAT is payable at 14% of the purchase price. As the seller is liable for payment, it is important to add the VAT to the purchase price, and to state clearly whether the agreed purchase price includes or excludes VAT. If nothing is stated, it is deemed to be inclusive of VAT, and the seller will be liable for VAT at the “tax fraction” (which equates to 12.28% of the gross price).
- ◆ The transaction may be zero-rated only when an income generating entity, which is also a going concern, is sold from a VAT vendor to a VAT vendor.
- ◆ A divorced spouse may acquire sole ownership in the whole or any portion of property registered in the name of his or her divorced spouse. Such transfer shall be exempt from transfer duty where that property or portion is transferred to that divorced spouse as a result of the dissolution of their marriage.
- ◆ **Conveyancing fees** – of the transferring attorney, may vary slightly according to rates set by the conveyancer who attends to the transfer, but are based on recommended fee guidelines from the law society (plus VAT).
- ◆ **Bond registration costs** – the purchaser normally pays the transfer and bond registration costs (plus VAT).
- ◆ **Deeds office / registration fees** – a fee which varies between **R35** and **R5 845**, dependent on purchase price / value of property.
- ◆ **FICA costs** – usually between **R500** and **R1 000** (plus VAT) per FICA investigation.

- ◆ **Sundry charges** – posts and petties and telephone calls payable to the transferring attorney (usually about R850 plus VAT), and valuation certificates – a disbursement to the local authority to obtain valuation and rates clearance certificate – which varies depending on the local authority e.g. Cape Town is **R408** for rates clearance electronic, and electronic facilitation cost **R195**.
- ◆ **Occupational rental/pro rata rates and taxes** – occupational rental payable as per agreement and usually prior to and adjusted on registration of transfer. Rates and taxes and utilities (levied by the local authority) are paid by the seller in advance for 120 days, who may then claim a refund from council for any amount overpaid, covering the period after registration of transfer.

## TYPICAL COSTS OF SELLING

- ◆ **Estate agent's commission** – Commission rates are calculated as a % of the gross purchase price and should be negotiated upfront with the agent. Sellers need to establish very clearly what commission an agent proposes to charge before awarding a mandate and to ensure that the % agreed upon after any negotiation is written into the mandate document (where applicable) and establish whether such % includes VAT.
- ◆ **Beetle inspection, electrical inspection, plumbing and gas certificates** – usually between **R350** and **R500** (plus VAT). The Seller will be responsible for any repairs required before such a clearance certificate can be issued. The beetle inspection certificate may be required by inclusion in the contract of sale. The electrical inspection certificate is required to be obtained by the seller in terms of legislation – the Occupational Health and Safety Act (85 of 1993).
- ◆ **Bond cancellation fees** – to cancel an existing bond. Sellers should be aware that they need to give their financial institution 90 days notice of their intent to sell and in turn cancel their bond finance to avoid early termination penalties.
- ◆ **Rates and taxes** – the seller is normally liable to pay rates up to the date of transfer. This may involve paying a 120 days rates in advance, payable before registration of transfer (can vary from agreement to agreement).
- ◆ **Electrical System Fence Certificate** – Usually this will be provided for in sale agreements concluded after 1 October 2012, which in most cases, will require the seller to bear the cost of ensuring compliance with specifications, together with the cost of obtaining the compliance certificate.
- ◆ **Other costs** – the bank may also charge a bond initiation fee – usually a base fee plus % of the loan amount, which is usually debited off home loan account. A homeowners insurance policy (to cover property and structures on it against natural disasters), home loan protection assurance (death, disability), moving costs, and telephone and internet connection costs may also need to be taken into account.

# EXCHANGE CONTROL

## ACQUISITION OF FIXED PROPERTY BY NON-RESIDENTS

Non-residents may invest in the Republic (including the acquisition of fixed property), provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms' length, at fair market-related prices, and are financed in an approved manner.

The following provisions relate to financial assistance in South Africa:

- ◆ **Emigrants:** Local financial assistance made available to emigrants is subject to the 1:1 ratio.
- ◆ **Non-residents:** Authorised Dealers may grant or authorise local financial assistance facilities to non-residents in respect of bona fide foreign direct investments into South Africa (including the acquisition of commercial property), without restrictions. Where the funds are required for the acquisition of residential property (or other financial transactions) in South Africa the 1:1 ratio will apply.
- ◆ **Affected persons (i.e. where non-residents directly or indirectly owns 75% or more of an entity):** There is no restriction on the amount that could be borrowed locally in instances where an affected person wishes to borrow locally to finance a foreign direct investment into South Africa (including the acquisition of commercial property), or for domestic working capital requirements. Wholly non-resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment in respect of the acquisition of residential property (and or other financial transactions) in South Africa. The effect of local participation in non-resident controlled entities is to make the abovementioned norms more liberal the greater the local participation, i.e. the ability to borrow locally increases. This is based on a formula.

## DISPOSAL OF FIXED PROPERTY BY NON-RESIDENTS

Proceeds from the sale of assets, including immovable property by non-residents in South Africa may be remitted abroad. Proceeds on the sale of assets, including immovable property in South Africa by Emigrants will be subject to the blocked account provisions, and withholding tax.

## YOUR WILL & YOUR PROPERTY

- ◆ If you bequeath your fixed property to your surviving spouse, then no tax is payable, as all bequests to spouses are exempt from estate duty and/or CGT. No transfer duty is payable on a bequest of fixed property to an heir/legatee.
- ◆ If the value of your estate is more than R3,5 million, estate duty will become payable on the balance in excess of R3,5 million. Sufficient cash should be made available to pay this duty in order to avoid selling any fixed property.
- ◆ If your property is subject to a mortgage bond, and you leave your property as a specific bequest, you may wish to make the bequest subject to the provision that your legatee takes over the bond liability. Alternatively, you may wish to secure the bond by life assurance, the proceeds of which would clear the debt on your death.
- ◆ If your children are still minors, (under 18 and unmarried), it is advisable to set up a testamentary trust in your will, which would come into effect should both parents pass away before they reach majority.
- ◆ If you bequeath your fixed property to a number of heirs in equal shares, this may give rise to impracticalities due to the indivisibility of the bequest, and may give rise to a redistribution agreement being drawn up between your heirs.
- ◆ There may be specific provisions in your antenuptial contract in regard to your fixed property, which may override your wishes in terms of your will.
- ◆ There is a portable R3.5 million estate duty deduction between spouses.
- ◆ Where agricultural property is bequeathed, the testator needs to be aware of Section 3 of the Subdivision of Agricultural Land Act, which prevents the subdivision of agricultural land, and such land being registered in undivided shares in more than one person's name. This is especially relevant when the testator is considering bequeathing agricultural land to more than one beneficiary.

# REGULATIONS FOR NEW BUILDINGS AND ENERGY USAGE

The EE Regulations or “energy efficiency regulations” for energy usage in buildings provide that all new buildings and building extensions in South Africa must conform to the regulations on energy conservation, including homes, industrial buildings, hotels and schools.

## **Compliance:**

The regulations are enforceable in terms of the National Building Regulations and Building Standards Act. Building plans will not be approved without compliance with the regulations. Buildings Control Officers (inspectors) will be required to ensure that buildings are built in accordance with National Building Regulations and specifically with energy usage requirements. No compliance – no occupancy certificate.

## **TAX ALLOWANCE FOR ENERGY-EFFICIENCY SAVINGS**

Regulations on the tax allowance for Energy-efficiency savings stipulate that any company holding a certificate that can prove their energy savings are genuine, can submit the certificate to claim an allowance from SARS. The allowance is as contemplated in Section 12L (2) of the Income Tax Act, 1962. Section 12L provides that tax incentives are available for savings in all energy forms, and not only electricity. The energy-efficiency savings tax incentive is calculated at a rate of 95c/kWh and also applies to cogeneration projects.

## **“ENVIRONMENTAL” DEDUCTIONS/ALLOWANCES**

- ◆ Section 12B Deduction in respect of certain machinery, plant, implements, utensils and articles used in farming or production of renewable energy
- ◆ Section 37B Deductions in respect of environmental expenditure
- ◆ Section 37C Deductions in respect of environmental conservation
- ◆ Section 11D Deduction for research and development costs
- ◆ Section 12K Exemption for Certified Emission Reductions
- ◆ Section 12L Special Allowance for Energy Efficiency Savings
- ◆ Section 12U Allowance for renewable energy supporting structures

# TRUSTS

## TAX RATES

Tax rates applicable to trusts are as follows:

TYPE OF TRUST	INCOME TAX RATES	CAPITAL GAINS TAX INCLUSION RATE
Normal Trust	45%	80%
Special Trust	Same as those applicable to natural persons, except that the rebates and interest exemptions do not apply.	40%

**Note:** A special trust is a trust created solely for the benefit of someone who suffers from a disability that prevents such person from earning sufficient income for their maintenance or from managing their own financial affairs. A special trust can also be created by way of a testamentary trust whereby relatives of the testator who are alive on the date of death are the beneficiaries. In order to qualify as a special trust, the youngest of the beneficiaries must, on the last day of the year of assessment of that trust, be under the age of 18 years.

## INTEREST-FREE AND LOW-INTEREST LOANS TO A TRUST

With effect 1 March 2017 loans made to a trust by

- ♦ a natural person, or
- ♦ at the instance of that person, a company in relation to which that person is a connected person, and where that person or company is a connected person in relation to the trust

the difference between the amount of interest incurred by the trust (if any, otherwise nil) and the interest that would have been incurred by that trust at the official rate of interest will be a continuing, annual donation for purposes of donations tax, made by the lender on the last day of the year of assessment of the trust



The following will be specifically excluded from the above donation provisions:

- ◆ special trusts that are created solely for the benefit of disabled persons
- ◆ trusts that fall under public benefit organisations
- ◆ vesting trusts (in respect of which the vesting rights and contributions of the beneficiaries are clearly established)
- ◆ loans used by the trusts to fund the acquisition of a primary residence
- ◆ loans that constitute affected transactions and are subject to transfer pricing provisions
- ◆ loans provided to the trust in terms of a sharia-compliant financing arrangement, or
- ◆ loans that are subject to dividends tax

The lender may utilise the annual donations tax exemption of R100 000 (or remaining portion if applicable) against this deemed donation.

No deduction, loss, allowance or capital loss may be claimed in respect of the reduction, waiver or other disposal of such a loan, advance or credit by the lender and will thus have no tax benefit for the lender.

## **OTHER ANTI-AVOIDANCE PROVISIONS**

Anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance schemes. These provisions will normally be applicable where income accrues to a person other than the donor as a result of a donation, settlement or other disposition made (i.e. interest free loans). These provisions may apply where income accrues to the following persons:

- ◆ The donor's spouse;
- ◆ A minor child of the donor;
- ◆ The trust to whom the donation, settlement or other disposition has been made;
- ◆ Non-residents.

The result of the anti-avoidance provisions are that the income that accrues to the person's mentioned above are deemed to be the income of the donor.

The official rate of interest is defined in Paragraph 1 of the Seventh Schedule of the Income Tax Act and is currently 8%.

## CHECKLIST WHEN BUYING OR SELLING A PROPERTY FROM A TRUST

<b>1. Review the Trust deed</b>	Review the clauses specifically pertaining to the powers and authority of the Trustees to act, in particular that the Trustees have the requisite capacity to contract on behalf of the trust regarding the acquisition or disposal of property.
<b>2. Letters of Authority</b>	Check that the Trustees are duly authorised to act in terms of the most recent Letters of Authority issued by the Master of the High Court, or Masters Certificate recording Trustees changes (Cape Town).
<b>3. FICA</b>	Keep copies of all signing Trustees' Identity documents, and other FICA documentation as required by the Financial Intelligence Centre Act (38 of 2001).
<b>4. Board of Trustees</b>	Check that the Board of Trustees is properly constituted, and that the minimum number of Trustees as required by the Trust Deed are appointed.
<b>5. Administrative requirements</b>	Ensure that the Trustees have issued the necessary authority for one Trustee to act on their behalf, failing which, all Trustees are required to sign the necessary documentation. A prior resolution of Trustees is required authorising the purchase of any immovable property in the name of the Trust. If this is not effected, all of the Trustees will be required to sign the Deed of Sale. Review the Trust deed to ensure that all minutes of meetings as required have been properly executed.

<b>Prime Bank Overdraft Rates</b>	
<b>Effective Date</b>	<b>Rate</b>
30.01.2014	9.00%
18.07.2014	9.25%
24.07.2015	9.50%
20.11.2015	9.75%
29.01.2016	10.25%
17.03.2016	10.50%

# DONATIONS TAX

Donations Tax is payable by any South African resident. The donations tax provisions do not apply to non-residents even if they donate South African assets. Donations tax is payable on the value of any gratuitous disposal of property (including the disposal of property for inadequate consideration) and the renunciation of rights.

## PRINCIPAL EXEMPTIONS

- ◆ Donations between spouses
- ◆ Donations to charitable, ecclesiastical and educational institutions, and certain public bodies in the Republic of South Africa (limited to certain thresholds)
- ◆ Donations by natural persons not exceeding R100 000 per year
- ◆ The donation of assets situated outside the Republic, subject to certain conditions
- ◆ Donations by companies not considered to be public companies up to R10 000 per annum
- ◆ Donations where the donee will not benefit until the death of the donor
- ◆ Donations made by companies which are recognised as public companies for tax purposes
- ◆ Donations cancelled within six months of the effective date
- ◆ Property disposed of under and in pursuance of any trust
- ◆ Donations between companies forming part of the same group of companies
- ◆ Reasonable bona fide contributions to the maintenance of individuals

## RATES

Donations tax is payable at the end of the month following the month in which the donation was made, at a flat rate of 20% on the value of the property donated.

# ESTATE DUTY

The general rule is that if the taxpayer is ordinarily resident in the Republic at the time of death, all of his assets (including deemed property), wherever they are situated, will be included in the gross value of his estate for the determination of duty payable thereon. Estate duty is currently levied at 20% on the dutiable estate. Estate duty is levied on the South African property of non-residents.

Deemed property includes insurance policies on the life of the deceased, claims in terms of the matrimonial property act as well as property that the deceased was competent to dispose of immediately prior to his death.

## **The most important deductions are:**

- ◆ Debts due at date of death
- ◆ Bequests to public benefit organisations
- ◆ Bequests to a surviving spouse

The Act allows for a R3.5m estate duty abatement. This abatement could rollover from the deceased to a surviving spouse, so that the surviving spouse can use a R7m abatement on death. The portability of the deduction will apply to the extent that the first dying spouse did not use the whole abatement.

There is relief from Estate Duty in the case of the same property being included in the estates of taxpayers dying within ten years of each other. The deduction is calculated on a sliding scale varying from 100% where the taxpayers die within two years of each other and 20% where the deaths are within eight to ten years of each other.

## **Executor's remuneration**

An executor is entitled to the following remuneration:

- ◆ The remuneration fixed by deceased in the will, or
- ◆ 3.5% of gross assets
- ◆ 6% on income accrued and collected from date of death

Executor's remuneration is subject to VAT where the executor is registered as a vendor.

# MORTGAGE BOND REPAYMENT FACTORS

INTEREST	YEARS			INTEREST	YEARS		
%	20	25	30	%	20	25	30
8.00	8.36	7.72	7.34	18.00	15.43	15.17	15.07
8.50	8.68	8.05	7.69	18.25	15.63	15.37	15.28
9.00	9.00	8.39	8.05	18.50	15.82	15.57	15.48
9.50	9.32	8.74	8.41	18.75	16.01	15.78	15.68
9.75	9.48	8.91	8.59	19.00	16.21	15.98	15.89
10.00	9.65	9.09	8.78	19.25	16.40	16.18	16.09
10.50	9.98	9.44	9.15	19.50	16.60	16.38	16.30
11.00	10.32	9.80	9.52	19.75	16.79	16.58	16.50
11.50	10.66	10.16	9.90	20.00	16.99	16.78	16.71
12.00	11.01	10.53	10.29	20.25	17.18	16.99	16.92
12.50	11.36	10.90	10.67	20.50	17.38	17.19	17.12
13.00	11.72	11.28	11.06	20.75	17.58	17.89	17.33
13.50	12.07	11.66	11.45	21.00	17.78	17.60	17.53
14.00	12.44	12.04	11.85	21.25	17.97	17.80	17.74
14.50	12.80	12.42	12.25	21.50	18.17	18.00	17.95
15.00	13.17	12.81	12.64	21.75	18.37	18.21	18.15
15.25	13.35	13.00	12.84	22.00	18.57	18.41	18.36
15.50	13.54	13.20	13.05	22.25	18.77	18.62	18.57
15.75	13.73	13.39	13.25	22.50	18.97	18.82	18.77
16.00	13.91	13.59	13.45	22.75	19.17	19.03	18.98
16.25	14.10	13.79	13.65	23.00	19.37	19.23	19.19
16.50	14.29	13.98	13.85	23.25	19.57	19.44	19.39
16.75	14.48	14.18	14.05	23.50	19.77	19.64	19.60
17.00	14.67	14.38	14.26	23.75	19.97	19.85	19.81
17.25	14.86	14.58	14.46	24.00	20.17	20.05	20.01
17.50	15.05	14.78	14.66	24.25	20.38	20.26	20.22
17.75	15.24	14.97	14.87	25.00	20.98	20.88	20.85

The table gives a monthly repayment per R1,000 of a loan with an interest rate ranging between 8% and 25% p.a., over a period of 20, 25 or 30 years. For example, if the loan is R100 000 at an interest rate of 10% p.a. to be repaid over 20 years, the monthly repayment is R100 000 divide by R1,000  $\times$  9.65 which is R965. Monthly repayments of approximately R965 will be required to liquidate capital and interest on a bond of R100 000.

# SALE OF PROPERTY TIMELINE

While the transfer process follows a series of successive stages, the time period involved varies considerably. Here are some guidelines:

- ◆ Cash transactions may take 6 to 8 weeks, subject to delays at the local authority and/or SARS and/or the Deeds office.
- ◆ In normal circumstances (including bond approval and registration), approx 2 months.
- ◆ If conditional on sale of purchaser's property (within 30 days), approx 3 months.

<b>Purchaser and Seller sign agreement</b>	<b>Stage 1</b>
<ul style="list-style-type: none"><li>◆ Seller to advise bank of intention to cancel bond to avoid 90 day cancellation penalty</li><li>◆ Bond approved</li><li>◆ Fulfillment of other suspensive conditions</li><li>◆ Deposit paid</li><li>◆ Transferring, bond and cancellation attorneys instructed</li><li>◆ Parties to provide FICA documentation and copy of rates account</li><li>◆ Transfer attorney requests title deeds and cancellation figures from the bank, and prepares transfer documents for signature by parties</li><li>◆ Bond attorney advises transfer attorney of amount available for guarantees</li></ul>	<b>Stage 2</b>
<ul style="list-style-type: none"><li>◆ Purchaser pays transfer costs</li><li>◆ Rates clearance and valuation certificates applied for (seller pays rates and utilities to transferring attorney). Both parties are advised to ensure that all rates arrears have been paid in full [S118(1) and (3) of the Local Government: Municipal Systems Act (32 of 2000)]</li><li>◆ Transfer attorney receives title deed and cancellation figures from cancellation attorneys and sends draft deed to bond attorney</li><li>◆ Bond documents prepared once draft deed received</li><li>◆ Cancellation attorney is requested to cancel seller's bond on receipt of guarantees from the new bond attorney</li><li>◆ Purchaser signs bond documents and pays bond registration costs</li><li>◆ Purchaser signs transfer documents</li><li>◆ Seller signs transfer documents</li><li>◆ Electrical, beetle, gas and electric fence certificates arranged (and plumbing, where appropriate)</li></ul>	<b>Stage 3</b>
<ul style="list-style-type: none"><li>◆ Transfer attorney pays rates/levies and transfer duty to SARS (electronically)</li><li>◆ Bond attorneys send guarantees to the transfer or cancellation attorneys</li><li>◆ Transfer attorney obtains consent from the bondholder to cancel the seller's bond</li></ul>	<b>Stage 4</b>
<ul style="list-style-type: none"><li>◆ Documents prepared for lodgement at Deeds Office</li><li>◆ Documents lodged at Deeds Office</li><li>◆ Documents are checked in the Deeds Office (+10 days, regulation: 7 days)</li><li>◆ Purchaser must have balance of purchase price available and pay it to transfer attorney before lodgement, or when called for in terms of the agreement</li></ul>	<b>Stage 5</b>
<b>ON REGISTRATION:</b> <ul style="list-style-type: none"><li>◆ Financial institution's attorneys have bond amount available</li><li>◆ Property registered in purchaser's name. Seller's bond cancelled. Purchaser's bond registered</li></ul>	

## COMPARATIVE TAX RATES

RATES OF TAX	2016	2017	2018
<b>NATURAL PERSONS</b>			
Maximum marginal rate	41%	41%	45%
◆ Reached at a taxable income	701 300	701 300	1 500 000
Minimum rate	18%	18%	18%
◆ Up to taxable income of	181 900	188 000	189 880
◆ CGT inclusion rate	33.3%	40.0%	40.0%
<b>COMPANIES &amp; CC's</b>			
◆ Normal tax rate	28%	28%	28%
◆ Dividends Tax	15%	15%	20%
◆ CGT inclusion rate	66.6%	80%	80%
<b>TRUSTS (other than special trusts)</b>			
◆ Flat rate	41%	41%	45%
◆ CGT inclusion rate	66.6%	80%	80%
<b>SUNDRY</b>			
◆ Donations Tax	20%	20%	20%
◆ Estate Duty	20%	20%	20%
<b>SMALL BUSINESS CORPORATIONS</b>			
Maximum marginal rate	28%	28%	28%
◆ Reached at a taxable income	550 000	550 000	550 000
Minimum rate	0%	0%	0%
◆ Up to a taxable income of	73 650	75 000	75 750
<b>MICRO BUSINESS</b>			
Max Rate of Tax	3%	3%	3%
◆ On turnover of	750 000	750 000	750 000
Minimum Rate	0%	0%	0%
◆ Up to a turnover of	335 000	335 000	335 000

## ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS

Price /Value/ Bond amount R	Transfer Costs						Bond Costs				
	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	
1 000 000	4 600	644,00	35	5 279,00	0	5 279,00	4 600	644,00	360	5 604,00	
150 000	5 300	742,00	75	6 117,00	0	6 117,00	5 300	742,00	360	6 402,00	
200 000	6 000	840,00	75	6 915,00	0	6 915,00	6 000	840,00	400	7 240,00	
250 000	6 700	938,00	465	8 103,00	0	8 103,00	6 700	938,00	400	8 038,00	
300 000	7 400	1 036,00	465	8 901,00	0	8 901,00	7 400	1 036,00	400	8 836,00	
400 000	8 800	1 232,00	580	10 612,00	0	10 612,00	8 800	1 232,00	580	10 612,00	
500 000	10 200	1 428,00	580	12 208,00	0	12 208,00	10 200	1 428,00	580	12 208,00	
600 000	11 600	1 624,00	580	13 804,00	0	13 804,00	11 600	1 624,00	580	13 804,00	
700 000	13 000	1 820,00	815	15 635,00	0	15 635,00	13 000	1 820,00	810	15 630,00	
750 000	14 400	2 016,00	815	17 231,00	0	17 231,00	14 400	2 016,00	810	17 226,00	
800 000	14 400	2 016,00	815	17 231,00	0	17 231,00	14 400	2 016,00	810	17 226,00	
900 000	15 800	2 212,00	930	18 942,00	0	18 942,00	15 800	2 212,00	935	18 947,00	
950 000	17 200	2 408,00	930	20 538,00	1 500	22 038,00	17 200	2 408,00	935	20 543,00	
1 000 000	17 200	2 408,00	930	20 538,00	3 000	23 538,00	17 200	2 408,00	935	20 543,00	
1 100 000	17 900	2 506,00	1 050	21 456,00	6 000	27 456,00	17 900	2 506,00	1 050	21 456,00	
1 200 000	18 600	2 604,00	1 050	22 254,00	9 000	31 254,00	18 600	2 604,00	1 050	22 254,00	
1 250 000	19 300	2 702,00	1 050	23 052,00	10 500	33 552,00	19 300	2 702,00	1 050	23 052,00	
1 300 000	19 300	2 702,00	1 050	23 052,00	13 500	36 552,00	19 300	2 702,00	1 050	23 052,00	
1 350 000	20 000	2 800,00	1 050	23 850,00	16 500	40 350,00	20 000	2 800,00	1 050	23 850,00	
1 400 000	20 000	2 800,00	1 050	23 850,00	19 500	43 350,00	20 000	2 800,00	1 050	23 850,00	
1 500 000	20 700	2 898,00	1 050	24 648,00	25 500	50 148,00	20 700	2 898,00	1 050	24 648,00	
1 600 000	21 400	2 996,00	1 050	25 446,00	31 500	56 946,00	21 400	2 996,00	1 050	25 446,00	



## ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

Price/Value/ Bond amount R	Transfer Costs					Bond Costs				
	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
1 700 000	22 100	3 094,00	1 050	26 244,00	37 500	63 744,00	22 100	3 094,00	1 050	26 244,00
1 800 000	22 800	3 192,00	1 050	27 042,00	44 500	71 542,00	22 800	3 192,00	1 050	27 042,00
1 900 000	23 500	3 290,00	1 050	27 840,00	52 500	80 340,00	23 500	3 290,00	1 050	27 840,00
2 000 000	24 200	3 388,00	1 050	28 638,00	60 500	89 138,00	24 200	3 388,00	1 456	29 044,00
2 100 000	24 900	3 486,00	1 275	29 661,00	68 500	98 161,00	24 900	3 486,00	1 456	29 842,00
2 300 000	26 300	3 682,00	1 275	31 257,00	86 000	117 257,00	26 300	3 682,00	1 456	31 438,00
2 400 000	27 000	3 780,00	1 275	32 055,00	97 000	129 055,00	27 000	3 780,00	1 456	32 236,00
2 500 000	27 700	3 878,00	1 275	32 853,00	108 000	140 853,00	27 700	3 878,00	1 456	33 034,00
2 600 000	28 400	3 976,00	1 275	33 651,00	119 000	152 651,00	28 400	3 976,00	1 456	33 832,00
2 700 000	29 100	4 074,00	1 275	34 449,00	130 000	164 449,00	29 100	4 074,00	1 456	34 630,00
2 800 000	29 800	4 172,00	1 275	35 247,00	141 000	176 247,00	29 800	4 172,00	1 456	35 428,00
2 900 000	30 500	4 270,00	1 275	36 045,00	152 000	188 045,00	30 500	4 270,00	1 456	36 226,00
3 000 000	31 200	4 368,00	1 275	36 843,00	163 000	199 843,00	31 200	4 368,00	1 456	37 024,00
3 200 000	32 600	4 564,00	1 275	38 439,00	185 000	223 439,00	32 600	4 564,00	1 456	38 620,00
3 300 000	33 300	4 662,00	1 275	39 237,00	196 000	235 237,00	33 300	4 662,00	1 456	39 418,00
3 400 000	34 000	4 760,00	1 275	40 035,00	207 000	247 035,00	34 000	4 760,00	1 456	40 216,00
3 500 000	34 700	4 858,00	1 275	40 833,00	218 000	258 833,00	34 700	4 858,00	1 456	41 014,00
3 600 000	35 400	4 956,00	1 275	41 631,00	229 000	270 631,00	35 400	4 956,00	1 456	41 812,00
3 700 000	36 100	5 054,00	1 275	42 429,00	240 000	282 429,00	36 100	5 054,00	1 456	42 610,00
3 800 000	36 800	5 152,00	1 275	43 227,00	251 000	294 227,00	36 800	5 152,00	1 456	43 408,00
3 900 000	37 500	5 250,00	1 275	44 025,00	262 000	306 025,00	37 500	5 250,00	1 456	44 206,00
4 000 000	38 200	5 348,00	1 275	44 823,00	273 000	317 823,00	38 200	5 348,00	1 456	45 004,00

4 200 000	39 600	5 544,00	1 750	46 894,00	295 000	341 894,00	39 600	5 544,00	1 765	46 909,00
4 300 000	40 300	5 642,00	1 750	47 692,00	306 000	353 692,00	40 300	5 642,00	1 765	47 707,00
4 500 000	41 700	5 838,00	1 750	49 288,00	328 000	377 288,00	41 700	5 838,00	1 765	49 303,00
5 000 000	45 200	6 328,00	1 750	53 278,00	383 000	436 278,00	45 200	6 328,00	1 765	53 293,00
5 500 000	46 950	6 573,00	1 750	55 273,00	438 000	493 273,00	46 950	6 573,00	1 765	55 288,00
6 000 000	48 700	6 818,00	1 750	57 268,00	493 000	550 268,00	48 700	6 818,00	1 765	57 283,00
6 200 000	49 400	6 916,00	2 100	58 416,00	515 000	573 416,00	49 400	6 916,00	2 100	58 416,00
6 400 000	50 100	7 014,00	2 100	59 214,00	537 000	596 214,00	50 100	7 014,00	2 100	59 214,00
6 500 000	50 450	7 063,00	2 100	59 613,00	548 000	607 613,00	50 450	7 063,00	2 100	59 613,00
6 700 000	51 150	7 161,00	2 100	60 411,00	570 000	630 411,00	51 150	7 161,00	2 100	60 411,00
6 800 000	51 500	7 210,00	2 100	60 810,00	581 000	641 810,00	51 500	7 210,00	2 100	60 810,00
6 900 000	51 850	7 259,00	2 100	61 209,00	592 000	653 209,00	51 850	7 259,00	2 100	61 209,00
7 000 000	52 200	7 308,00	2 100	61 608,00	603 000	664 608,00	52 200	7 308,00	2 100	61 608,00
7 200 000	52 900	7 406,00	2 100	62 406,00	625 000	687 406,00	52 900	7 406,00	2 100	62 406,00
7 300 000	53 250	7 455,00	2 100	62 805,00	636 000	698 805,00	53 250	7 455,00	2 100	62 805,00
7 400 000	53 600	7 504,00	2 100	63 204,00	647 000	710 204,00	53 600	7 504,00	2 100	63 204,00
7 500 000	53 950	7 553,00	2 100	63 603,00	658 000	721 603,00	53 950	7 553,00	2 100	63 603,00
7 600 000	54 300	7 602,00	2 100	64 002,00	669 000	733 002,00	54 300	7 602,00	2 100	64 002,00
7 700 000	54 650	7 651,00	2 100	64 401,00	680 000	744 401,00	54 650	7 651,00	2 100	64 401,00
7 800 000	55 000	7 700,00	2 100	64 800,00	691 000	755 800,00	55 000	7 700,00	2 100	64 800,00
7 900 000	55 350	7 749,00	2 100	65 199,00	702 000	767 199,00	55 350	7 749,00	2 100	65 199,00
8 000 000	55 700	7 798,00	2 100	65 598,00	713 000	778 598,00	55 700	7 798,00	2 100	65 598,00
8 200 000	56 400	7 896,00	2 455	66 751,00	735 000	801 751,00	56 400	7 896,00	2 455	66 751,00
8 300 000	56 750	7 945,00	2 455	67 150,00	746 000	813 150,00	56 750	7 945,00	2 455	67 150,00
8 500 000	57 450	8 043,00	2 455	67 948,00	768 000	835 948,00	57 450	8 043,00	2 455	67 948,00
8 600 000	57 800	8 092,00	2 455	68 347,00	779 000	847 347,00	57 800	8 092,00	2 455	68 347,00
8 800 000	58 500	8 190,00	2 455	69 145,00	801 000	870 145,00	58 500	8 190,00	2 455	69 145,00
8 900 000	58 850	8 239,00	2 455	69 544,00	812 000	881 544,00	58 850	8 239,00	2 455	69 544,00
9 000 000	59 200	8 288,00	2 455	69 943,00	823 000	892 943,00	59 200	8 288,00	2 455	69 943,00

## ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

Price /Value/ Bond amount R	Transfer Costs					Bond Costs				
	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
9 100 000	59 550	8 337,00	2 455	70 342,00	834 000	904 342,00	59 550	8 337,00	2 455	70 342,00
9 200 000	59 900	8 386,00	2 455	70 741,00	845 000	915 741,00	59 900	8 386,00	2 455	70 741,00
9 500 000	60 950	8 533,00	2 455	71 938,00	878 000	949 938,00	60 950	8 533,00	2 455	71 938,00
9 600 000	61 300	8 582,00	2 455	72 337,00	889 000	961 337,00	61 300	8 582,00	2 455	72 337,00
9 700 000	61 650	8 631,00	2 455	72 736,00	900 000	972 736,00	61 650	8 631,00	2 455	72 736,00
9 800 000	62 000	8 680,00	2 455	73 135,00	911 000	984 135,00	62 000	8 680,00	2 455	73 135,00
10 000 000	62 700	8 778,00	2 455	73 933,00	933 000	1 006 933,00	62 700	8 778,00	2 455	73 933,00
11 000 000	66 200	9 268,00	2 920	78 388,00	1 063 000	1 141 388,00	66 200	9 268,00	2 923	78 391,00
12 000 000	69 700	9 758,00	2 920	82 378,00	1 193 000	1 275 378,00	69 700	9 758,00	2 923	82 381,00
15 000 000	80 200	11 228,00	2 920	94 348,00	1 583 000	1 677 348,00	80 200	11 228,00	2 923	94 351,00
16 000 000	83 700	11 718,00	3 505	98 923,00	1 713 000	1 811 923,00	83 700	11 718,00	3 510	98 928,00
20 000 000	97 700	13 678,00	3 505	114 883,00	2 233 000	2 347 883,00	97 700	13 678,00	3 510	114 888,00
25 000 000	115 200	16 128,00	4 675	136 003,00	2 883 000	3 019 003,00	115 200	16 128,00	4 090	135 418,00
30 000 000	132 700	18 578,00	4 675	155 953,00	3 533 000	3 688 953,00	132 700	18 578,00	4 090	155 368,00
30 000 001	133 050	18 627,00	4 675	156 352,00	3 533 000	3 689 352,13	133 050	18 627,00	5 845	157 522,00

### NOTES:

Transfer and bond costs not inclusive of FICA costs, and any other disbursements, such as post and netties, rates clearance and/or levies, cancellation costs of existing bond, bank initiation and valuation fee, electronic document generation fees etc. – for which provision should also be made. Whilst every care is taken with compiling these tables, we reserve the right to correct any possible inaccuracies and cannot be bound by them.

**NB: the conveyancing fees serve as a GUIDELINE only as per recommended guidelines of fees and are subject to change and updates issued by the various law societies from time to time. Mere reference to the tables may result in misapprehension as to the costs involved. Our fees may vary from the guideline based on each matter quoted for.**



B R E N D A T A N N E R

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ATTORNEY › NOTARY › CONVEYANCER