

THE CONVEYANCING PROCESS

An agreement to purchase immovable property must be in writing and signed by the seller and purchaser. The agreement is usually prepared by an attorney or an estate agent. The signed agreement is forwarded to a conveyancer, an attorney specialising in property law, to attend to the registration of transfer of the property.

The law requires that property transfers and registrations of mortgage bonds be attended to by a conveyancer. Conveyancing fees are usually charged according to a recommended tariff as laid down by the Law Society.

PRELIMINARY PROCEDURE

On receipt of the agreement the conveyancer:

- Checks the agreement carefully taking note of the important provisions of the transaction, particularly suspensive conditions, financial details and relevant dates
- Conducts a Deeds Office search to confirm any mortgage bonds or interdicts against the property
- Requests copies of identity documents, marriage certificates and marriage contracts (if applicable) from the purchaser and seller. Further documents necessary for the purposes of FICA are a copy of a utility bill and the party's income tax number reflected on a SARS letterhead
- Calls for the original title deed of the property which is usually held by the financial institution to whom the property is bonded. If the property is not bonded then the seller should be in possession of the title deed
- Applies to the municipality for a rates assessment if the property is freehold or to the body corporate/managing agent for a levy clearance certificate if the property is sectional title
- Applies to the Homeowners Association for a levy clearance certificate (if applicable)

LOST TITLE DEEDS

The deeds office keeps a record of all property transactions. If a title deed is destroyed or lost, application can be made to the deeds office for a duplicate original of the deed, at a fee. The application is accompanied by an affidavit stating that the deed is actually lost or destroyed and that diligent search has been made for the deed. Once the Registrar is satisfied he will then issue a certified copy of the title deed which will, for all purposes, be treated as if it were the original.

TITLE DEED FROM FINANCIAL INSTITUTION

The financial institution forwards the title deed, advice of the amount owing under the seller's bond and instructions to cancel the bond to their attorney. The cancellation attorney sends the title deed and guarantee requirements to the conveyancer attending to the transfer.

CANCELLING THE SELLER'S EXISTING BOND

Once the conveyancer has the cancellation figures from the bondholder of the amount still owing, they will prepare the necessary documents for signature by the seller. The conveyancer ensures that the seller is able to pay the amount outstanding to the bondholder and is required to furnish the bondholder with a guarantee. Once the transaction is registered the conveyancer will then pay according to the guarantee.

PREPARATION OF TRANSFER DOCUMENTS

On receipt of the title deed, personal particulars and confirmation that suspensive conditions have been fulfilled, the transfer documents are prepared by the conveyancer. A copy of the draft deed of transfer and guarantee requirements are sent to the attorney instructed to register the purchaser's bond. The conveyancer attending to the transfer may also be instructed by the financial institution to register the bond.

SIGNING AND PAYING TRANSFER COSTS

Arrangements are made for the transfer documents to be signed by the seller and purchaser. At this stage, the purchaser is required to pay the pro-forma account which is an estimate of the transfer costs. Included in such account is transfer duty or VAT payable to the Receiver of Revenue, the conveyancing fee plus VAT, rates and disbursements. The conveyancer attends to payment of these amounts on behalf of the purchaser.

PREPARATION OF BOND DOCUMENTS, SIGNING AND PAYING COSTS

The bond attorney drafts the mortgage bond and arranges for the purchaser to sign and pay costs. Included in such account are the deeds office registration fee, the conveyancing fee plus VAT and disbursements. The bond attorney ensures that the bank's requirements have been fulfilled, e.g. insurance, life cover, guarantee from employer. Guarantees for the amount of the bond are prepared and forwarded to the conveyancer.

DOCUMENTS FORWARDED TO DEEDS OFFICE

Having secured the purchase price, received the transfer duty receipt from the Receiver of Revenue, rates clearance certificate from the municipality or levy clearance certificate from the body corporate / managing agent, clearance certificate from the Homeowners Association (if applicable) the conveyancer ensures that all other conditions are met, signs the documents and lodge them in The Cape Town Deeds Registry.

LODGING THE VARIOUS DOCUMENTS

The conveyancer lodging the transfer documents in the deeds office will collaborate with the conveyancer attending to the registration of the purchaser's new bond and the conveyancer cancelling the seller's existing bond. All three sets of documents are lodged simultaneously.

UP ON PREP

The linked documents are scrutinised by deeds office examiners and if found in order, the conveyancer will notify the bond attorney and cancellation attorney that the transactions are to be registered the following day. This is commonly referred to as "up on prep".

REGISTRATION OF TRANSFER

The documents are registered by the Registrar of Deeds between 7 to 10 working days after lodgement when the existing bond is cancelled, ownership formally passes to the purchaser and the purchaser's bond is registered.

FINALISATION OF ACCOUNTS

On the day of registration the conveyancer presents the guarantees for payment and final accounts are prepared in favour of the seller and purchaser. The proceeds are distributed according to the sale agreement and any other directions of the seller, and if applicable, the estates agents' commission is paid.

DEEDS OFFICE RECORDS AND RETURN OF DOCUMENTS

After registration, the deeds office scans the registered documents, updates its computer records and returns the registered documents to the conveyancer and bond attorney after approximately 3 months. This time period can vary. Where a mortgage bond has been registered, the original title deed is forwarded to the financial institution by the conveyancer to be held as security for the loan.

LENGTH OF PROCEDURE

The period it takes to register the transactions in the deeds office is dependent on various factors and a number of parties, as can be seen from the above procedure. On average, the time taken to register a transfer is six to eight weeks, although unforeseen difficulties may cause the period to be extended.