



Property Transfer Explained

The process of transferring property frequently leaves buyers and sellers alike confused, frustrated and in the dark as to what exactly the sequence of events are to have a property transferred. With the sale agreement signed, surely the hardest part has been taken care of? The reality is, that our property regime in South Africa is quite sophisticated and with numerous stakeholders and role players impacted by a transaction, the actual process of transfer can become quite complex. Accordingly, it is important to understand the procedure and prepare oneself for the steps of the transfer process.

Firstly, it is unfortunate that more often than not, the transfer process takes longer than expected, often due to technicalities arising or as a result of the complexity of having many stakeholders (multiple attorneys, financial institutions, SARS, Deeds Office, local authority etc.) involved. A delay by any one party can impact the flow of the entire transaction. The upside is that our property system is extremely accurate with special measures taken to verify that all documents are 100% correct and that each and every land purchase is verified and documented by the Registrar of Deeds.

The process can also involve multiple attorneys (transferring attorneys, bond cancellation attorneys, bond registration attorneys etc.) with these specialists

also playing a crucial role in coordinating a speedy registration. Accordingly, choose your attorneys, especially the transferring attorneys, with care as this choice could affect the speed of your transaction.

The transfer of property (conveyancing) includes all the administrative and legal procedures necessary to transfer ownership (and other real rights) in immovable property from one person to another. A practicing attorney who has passed the National Conveyancer's Exams and has been admitted as a Conveyancer of the High Court of South Africa is officially recognised to draft the required specialised documents and deeds that are required for registration in the Deeds Office.

The Deed of Sale/Offer to Purchase

The transfer process will generally commence with a contract of sale and end with a bond registration and/or the registration of the transfer of the immovable property. In the event that an attorney did not draft the offer to purchase and a standard form is used by the estate agent, it is the responsibility of the estate agent to explain the terms of the contract to the relevant parties and ensure that the contract is validly concluded. The contract of sale must be in writing, clearly identify the property being sold, the purchase price and the terms of payment, and must be signed by both the purchaser and the seller before the transfer process can commence. The date on which the last party signs will be the date of sale.

The transferring attorney

The transferring attorney receives the instruction from the client or the estate agent to attend to the transfer. Generally, unless the parties agree otherwise the seller usually nominates the transferring attorney.

Upon receiving the instruction, the transferring attorney will conduct a deeds search on the property

to verify that all the property and related information is correct. It may also be necessary to do a company search to verify the directors of a company who is a party to the contract. In order to comply with FICA requirements the transferring attorney will require the purchaser's and seller's details. Accordingly, the following documents will generally be required from all the parties:

- Copies of identity documents
- Proof of residence – not older than 3 (three) months
- Income tax number or VAT registration number
- Marriage certificates (in case of a marriage in community of property, also FICA documents for the spouse)
- Ante-nuptial agreement
- Divorce orders and settlement agreement
- In the case of a close corporation or a company, the details of the directors, shareholders or members. Additionally, the incorporation documents of the legal entity or the trust deed and trust letters of authority will also be required.
- The conveyancer will also request the original title deed from the seller or in the case where a bond is registered, the bond account number and details of the bond holder to request cancellation figures.
- The conveyancer will also upon receiving and verifying the above information institute the following actions:
 - Apply for bond cancellation figures (if applicable)
 - A request will be sent to the existing bondholder, who will then issue bond cancellation figures and appoint a firm of attorneys to attend to the cancellation of the existing bond simultaneously with the transfer. It is important that the seller keeps his bond instalments up to date to avoid a shortfall and/or delay.

Rates clearance figures from the local authority

In order to obtain a Rates Clearance Certificate the seller is required to make payment of rates for a period of 3 months in advance. This amount is calculated on an estimated amount calculated over a 24 month period and the Deeds Office will not register any transfer without proof that the rates have been paid. However, if any taxes are owed, the seller is not exonerated and the taxes will still have to be paid by either the seller or the new owner as per their contract of sale. It is worth noting that this can sometimes be quite a lengthy process to be finalised, depending on efficiency of the relevant local authority.

Transfer duty or VAT receipts from SARS via e-filing

Transfer duty for natural persons and legal entities are calculated on a sliding scale according to the purchase price of the property and the SARS e-filing system ensures that all parties (including the relevant estate agent/agency) are registered and that their taxes are up to date. VAT is payable if the seller is a registered VAT vendor. As a result this process can take some time to be completed and it is essential that all parties provide the correct tax details to the transferring attorney and resolve any tax issues prior to submitting the e-filing applications. This will ensure you avoid any unnecessary delays.

Electric compliance certificate from a certified electrician

The seller will usually obtain this certificate but there should always be a clause in the sale contract that indicates who should obtain it and who bears the cost of this certificate.

Other compliance certificates

Other certificates may be required to be obtained such as a gas or electrical fence compliance certificate (as applicable). Again the sale contract should address which party is responsible for these certificates and who must carry the associated cost. In coastal provinces we may be required to obtain a beetle certificate or plumbing certificate.

Levy clearance certificate from the managing agents/body corporate (sectional title)

This is required where the property is part of a sectional title scheme to verify that all outstanding levies in respect of the sectional title have been paid up to date.

Transfer documents drafted and prepared

Upon receipt of the necessary information the transferring attorney will draft and prepare the necessary transfer documentation for signature by the buyer and seller and arrange to meet with the buyer and seller to sign the documents.

- Documents to be signed by seller:
- Power of attorney
- Transfer duty declarations
- Affidavits (Solvency; FICA)
- Resolutions (if applicable)
- Bond cancellation information sheet (if applicable)

Documents to be signed by purchaser:

- Transfer duty declarations
- Affidavits (Solvency; FICA)

After signature of the documents by both the buyer and the seller, the transferring attorney will await receipt of the following documentation before lodgment at the Deeds Office can take place. This can be a lengthy wait if delays are experienced with any of the other transaction role players.

- The rates clearance certificate from the local authority
- Clearance certificate from the managing agents/body corporate
- Guarantees from financial institutions
- The original title deed from the owner and/or existing bondholder
- Consent of the bond holder to cancel the existing bond
- Consents required in terms of conditions in the title deed i.e. servitude or other registered real rights

Lodgement at the Deeds Office

Documents for transfer of the property, the bond documents for registration of the new bond and the documents for cancellation of the seller's bond are linked and lodged at the Deeds Office simultaneously by all the attorneys involved.

Preparation of the deeds in the Deeds Office

It takes a number of days to check all the documentation before it is ready for registration. The conveyancers get an opportunity to correct any mistakes noted by the examiners unless the deeds are rejected. The deeds are then prepared for registration and execution.

Registration of the deeds

The Registrar executes the deed and updates the register and microfilms a copy of the deeds.

Following registration

The transferring attorney will advise all parties of the registration, present guarantees for payment and prepare the final accounts for the buyer and the seller, subsequently the seller will be paid the purchase price.

Delivery of registration documents

Upon receipt of the documents from the Deeds Office the transferring attorney will send the title deeds to the bondholder/s for safekeeping. If there is no bond, arrangements will be made with the purchaser to collect the necessary documents or have such sent via registered post. After registration the deeds office update their data records and microfilm the title deeds and other documents. As a result thereof it takes approximately 6 (six) months before the documents are returned to the transferring attorney.

As is clear from the above, there are a number of steps and processes that must be completed before a transaction can be registered. A good transferring attorney will facilitate the management of the process, but the availability of the required information and the speed of delivery of required documents from third parties are critical to the conclusion of the transfer process. This is where you can assist by ensuring that information provided is complete and assist where possible with the retrieval of the required documents.



Blackheath:

3rd Floor, Blackheath Mews, 256 Beyers Naude Drive

E-mail: blackheath@nelsonborman.co.za

Tel: 011 476 2420/1

Fax: 086 653 6063 / 011 476 2400

Florida:

2nd Floor, West Block, UASA Office Park, 40 Goldman Street

E-mail: florida@nelsonborman.co.za

Tel: 672 5441/2

Fax: 011 672 5493

Johannesburg:

17th Floor Schreiner Chambers, 94 Prichard Street (corner Kruis Street) E-mail: joburg@nelsonborman.co.za Tel: 011 333 1083

Fax: 011 333 1129

Randburg:

2nd Floor Standard Bank Centre, 304 Oak Avenue

E-mail: randburg@nelsonborman.co.za

Tel: 011 886 3675

Fax: 011 787 9016

Sandton:

5th Floor, Sala House, 12 Fredman Drive, Sandton

Email: sandton@nelsonborman.co.za

Tel 011 883 6466

Fax: 011 884 6675