

## **QUICK FACTS**

Conveyancing describes the legal process in terms of which rights in fixed property are registered in the deeds office; these rights include ownership, mortgage, servitude, mineral rights and others. All these rights vest legally in a person only once registration has taken place. The registration process, therefore places an official seal on a person's rights in fixed property. A conveyancing transaction involves a chain of steps which begins with the deeds of sale and continues through the ultimate registration of ownership and reconciliation of finance and payment. 'Fixed property' is any land, whether it is unimproved or improved by addition, for example, of a house farm, sectional title unit. Conveyancer: A conveyancer is admitted as such by the high court after having completed a special qualifying examination. Only a person who is admitted by the high court as an attorney may practice as a conveyancer, all conveyancers are therefore also attorneys but all attorneys are not necessarily conveyancers. Who appoints conveyancer? In most provinces in South Africa the usual practice is for the seller to appoint a conveyancer for a property transaction although this like other aspects of a sales agreement can be varied as a result of negotiations between parties. The purchaser may also appoint a conveyancer to advise him/her but these charges will be over and above the conveyancer costs submitted by the seller conveyancer, who will be doing the actual transfer. In terms of the Estate Agent code of conduct in the estate agency Affairs Act 1976, No estate shall without good and sufficient cause, directly or indirectly, solicit or encourage, persuade or influence any party or potential party to a pending or complete transaction to utilise the or refrain from utilising the service of the particular attorneys.

## **WHY IS A CONVEYANCER NECESSARY?**

A great deal is at stake in the transfer of fixed property. It is generally the largest single asset that a person owns and the transaction for the purchase of sale of a fixed property and relates transactions. This is not only to give proper protection to the rights and interests of the public, but also to safeguard the integrity of South African Land registration system which is universally regarded as one of the world's best.

When all the checks have been made all the procedures followed by the conveyancer and the property has been registered in the name of the purchaser the purchaser can be assured that he or she has the best title of the property.

## **WHAT RECOURSE DO YOU HAVE IF A CONVEYANCER FAILS TO DO THE JOB?**

Conveyancers are subject to disciplinary powers of the law society of the province in which they practise. Law society will act in the interest of the public. A complainant may lodge with the relevant law society if someone believes that the conveyancer has not done his/her job properly, he/she may lodge a complaint with the relevant law society which will investigate the matter and in appropriate cases will discipline the conveyancer.

If the conveyancer has been negligent and the purchaser or the seller should suffer any loss as a result of such negligence, they may have a claim against the conveyancer for the amount of loss.

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# BUYING OR SELLING A HOUSE

# S/A INCORPORATED

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## **BUYING A HOUSE**

Buying a house is probably the biggest and most important investment you will ever make.

When you do find a house you wish to buy and before you sign any deed of sale(also sometimes referred to as an offer to purchase’), follow these simple guideline:

Examine the house thoroughly. Enquire about the roof gutters, electrical wiring, foundation etc, should you have any doubt at all, consult an expert to examine the house. Should there be any defects provided in the deed of sale for correction by the seller at his costs

Before you sign a deed of sale, give the document to an attorney to examine. Ask about anything that is not clear.

Enquire about any additional costs such as rates and transfer costs

- Your attorney will have the answers. All provisions and promises must form part of the written contract, verbal agreements are not enforceable. A document signed by you and then accepted by the buyer could become a binding agreement.

Ensure that your finances are sound. Should you need a bond, also make provision for the costs of valuation of the property and registration – your attorney can tell you about this.

If you are not certain whether you will be able to obtain a loan to provide for purchase price and/ or other costs, make the sale subject to obtaining a loan.

Ensure that the deed of sale provides for the issue of a beetle-free certificate at the expense of the seller in the Cape provinces and KwaZulu Natal, And for a certificate of compliance in respect of electrical installation in all provinces.

Does the seller require a deposit on the selling price? should this be the case, arrange for payment in trust to any attorney pleading transfer and for safekeeping in a special savings account the house is in your name with the consent of both parties the attorney may invest these monies subject to the condition that the interest earned will be for your own account.

Take note of the date of occupation in the deed of sale. Should you move in before the house is in your name , you would be expected to pay rent, make sure who is responsible for the payment of taxes, levies and insurance premiums during this period . should the sale fall

through after you have moved in you would naturally have to move out again with the attendant expense and inconvenience.

If the seller wants to remove any items such as plants cupboards etc, this needs to be explicitly set out in the contract. Any loose items (such as curtains, swimming, pool equipment etc.) must also be specified.

## **SELLING A HOUSE**

Property is a major assets and the seller , buyer and estate agent all have important but different – and potentially conflicting interests – to consider when concluding a sale. So it makes sense for a seller to consult and appoint his/her own attorney (rather than the agents attorney) before signing a contract so that the property is transferred without delay

Should you be planning to sell your house, do not loose the money earned by the investment not knowing about the legal aspects involved.

Follow these guideline:

Keep your house and the premises neat and clean so that it is attractive to prospect buyers.

Consult your attorney concerning your rights obligations. As the seller you have the right to appoint your attorney to handle the transfer. Do not allow an estate agent to convince you otherwise.

Approach one or more estate agents of your choice to list your property. Do not give sole rights to sell the property to one agency without considering it very carefully. Your attorney will be able to advise you about this.

When you find a buyer , do not sign any offer or deed of sale before your attorney has examined the document. All provisions and promises must form part of written contract. Verbal agreements are not enforceable.

Before you sign, find out what commission is payable to the estate agent and whether Vat is included.

Give the estate agent the name of your attorney– your attorney will deal with the legal aspects and ensure that the house is transferred to the buyer. He will also organize the finances and ensure that your receive your money.

The following a list of important requirements that should be met in a deed of sale. However this list is not complete as each transaction has its individual requirements. Should you wish to do so, Your attorney can draw up a deed of sale.

The names, identity numbers and marriage status(e.g Married in or out of community of property)or capacity(when a company is involved) the parties concerned as well as the purchaser’s and the buyer’s addresses.

- The description and size of the property or stand as detailed in your deed of transfer
- The selling price and manner of payment
- The name of the attorney handling the transfers
- The date of taking possession of occupation
- The provisions that the buyer is responsible for all taxes and other municipal charges from the day of taking possession.
- The provision that the house is sold ‘as is’ (in other words without any guarantee on your part regarding any visible faults) .
- The commission due and the name of the estate agent.
- Should the date occupy before the date of transfer, ensure that the buyer pays interest on the sale figures or rent until the date of transfer. The amount and manner of payment must be stipulated.
- The fact that no change to the deed of sale is valid unless it is written and signed by both parties.
- Whether b eettle free certificate should be obtained(Cape Province s and KwaZulu Natal) and if so who should pay for the inspection and any work required.
- Any special conditions , as an example:
- A List of any articles included from the sale.
- Whether the sale is subject to a buyer obtaining a bond or a sale of the buyers house. Your attorney can advise you with regard to these conditions.
- A special deed of sale should be drawn up should the buyer wish to pay the selling price over an extended period of time. This is a relatively complex issue which also holds certain risks and you are strongly urged to allow your attorney to draw up the deed of sale.