



## **The Conveyancing Process**

Becoming a property owner can signal an exciting milestone in one's life and often a long search has been involved to find the ideal property. Or you may have decided to sell your property and move on to something different. Either way the decisions involved are some of the most important financial decisions you will ever make. It is also your entry point to the Conveyancing process.

As soon as property is bought or sold this fact must be recorded at a government records office, which in Cape Town, is called the Cape Town Deeds Office. This office records all the details of the ownership of every piece of land in Cape Town and is accessible to the public. The Deeds Office captures this information through the conveyancing process.

There are many stakeholders in the conveyancing process – from attorneys to estate agents, owners and potential owners, municipal and financial institutions and of course, the South African Revenue Services.

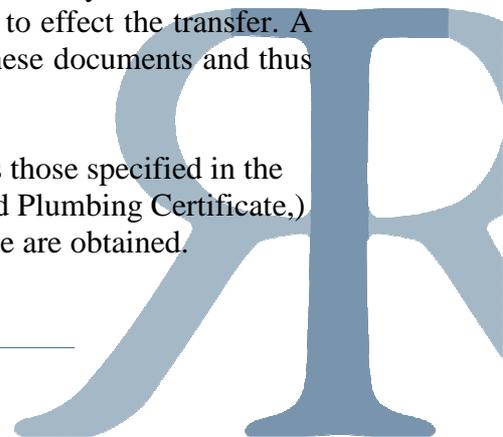
The Conveyancer is central to the conveyancing process. Conveyancers are experts in property transactions and are responsible for carrying out the many steps needed to transfer the ownership of immovable property from the registered Owner to the Purchaser. The conveyancing process is complex and multi-dimensional and it should not be underestimated, especially the importance of who is appointed as the Conveyancer.

Although the usual practice is for the Seller to nominate the Conveyancer, the Purchaser is the party who drives the transfer process. After a valid agreement of sale has been concluded, the Purchaser must ensure that his or her bond application is processed. The quicker this is done the quicker the transfer process can begin. The Purchaser provides the relevant financial institution with a copy of the Deed of Sale. The Offer to Purchaser, once signed and accepted by all the relevant parties, becomes the Deed of Sale. The Purchaser will be required to sign all the necessary paperwork before the bond can be approved.

It is important for the Seller to give the bondholder (usually a financial institution) notice that he or she intends cancelling their bond as most banks have prescribed notice periods and hefty penalty charges. The Seller must also continue making bond repayments even though the property has been sold and only on registration of the transfer of ownership is the bank required to render a final account. If any amounts have been overpaid the Seller is entitled to be refunded by the bank.

The Conveyancer draws up all the necessary documents to inform the Deeds Office that ownership in the relevant property is to be transferred to a new owner. They liaise with both parties and require them to sign all the documents that are necessary to effect the transfer. A lot of paperwork is involved! The Deeds Office closely scrutinises these documents and thus much care must be taken in drawing them up.

The Conveyancer must ensure that all the relevant certificates, such as those specified in the Deed of Sale (Electrical Compliance Certificate, Beetle Certificate and Plumbing Certificate,) as well as a Rates Clearance Certificate and a Transfer Duty Certificate are obtained.



Once all the necessary documentation has been completed and signed by the Seller and the Purchaser the Conveyancer liaises with the other attorneys (such as those attending to the cancellation of the Seller's bond and the registration of the Purchaser's bond) and arranges for all the necessary documentation to be lodged simultaneously in the Deeds Office.

The documents then begin their journey through the Deeds Office, where three levels of examiners check through all the documents. This process can be anything from 2 to 3 weeks depending on the workload of the Deeds Office staff. Sometimes the examiners raise queries or request additional information from the Conveyancer. If the documents are in order, these requests should not cause any substantial delays. As Conveyancers are also human there are occasionally errors that result in a transfer being rejected. The Conveyancer must then rectify the error and re-lodge the transfer documents. In such a case the delays will be longer.

Once the transfer is registered and the Purchaser's bank has been notified it will release the funds in terms of the bond. The Conveyancer then accounts to both the Purchaser and the Seller and makes any final calculations in respect of interest due to the Purchaser in respect of any monies invested (if any), settles any balance owing on the Seller's bond (if any), recovers his or her fees and unless the Deed of Sale provides otherwise, pays the estate agent his or her commission. The balance of the funds remaining is due to the Seller.

The success of the conveyancing process relies on the ability of the Conveyancer to manage the process through getting all the parties involved to work together collaboratively.

## **Glossary of Terms**

### **Conveyancer**

This is a specially qualified attorney who, after specialising in property law, has been admitted by the High Court to practise as a Conveyancer. Their sole function is to transfer the property from the Seller to the Purchaser. Any work not part of the conveyancing process that is done by the Conveyancer - such as collecting occupational interest, as well as sorting out problems - is not included in the costs of transfer and the Conveyancer is entitled to charge a separate fee to the party who has issued the instructions.

### **Costs of Transfer**

These are the various costs of the transaction and include the Conveyancer's professional fee, as well as the transfer duty that is payable by the Purchaser.

**Deeds Office:** The place where the details of ownership etc. of each and every piece of land in the Republic of South Africa is recorded. The Deeds Office registers the change in ownership of all fixed property. The Cape Town Deeds Office is in the old SARS building in Plein Street.

### **Electrical Compliance Certificate**

A certificate that is issued in terms of relevant legislation to the effect that the electrical wiring etc. in the premises meets the required safety standards. The Deed of Sale states who is responsible for obtaining the Certificate (usually the Seller) as well as the related costs. This Certificate cannot be waived by the Parties.

### **Electric Fence Compliance Certificate**

A certificate that is issued in terms of relevant legislation to the effect that the electric fence surrounding the premises meets the required safety standards. The Deed of Sale states who is responsible for obtaining the Certificate (usually the Seller) as well as the related costs. This

is a recent requirement since 1 December 2012. If no changes have been made to the installation since it was installed then the original installation certificate satisfies the requirement. Parties may agree to waive the Certificate.

### **Estate Agent's Commission / Brokerage**

This is a portion (often a percentage) of the purchase price that the Seller pays to the estate agent for brokering the successful sale agreement.

### **Gas Certificate**

A certificate that is issued in terms of relevant legislation to the effect that the gas installations (if there are any) in the premises meets the required safety standards. The Deed of Sale states who is responsible for obtaining the Certificate (usually the Seller) as well as the related costs.

### **Investment of Trust Money**

In many cases the purchase price is guaranteed by means of a cash deposit. Upon the receipt of written instructions, the Conveyancer will invest the cash on behalf of the Purchaser in an interest-bearing account. The investment is known as a section 78(2A) investment. The interest earned thereon is for the Purchaser's benefit. The Deed of Sale may authorise the Estate Agent to invest the money.

### **Mortgage Bond**

Most often this is an agreement between a financial institution and a mortgagor (the Purchaser) whereby money is lent to fund the purchase price of the property. The property is given as security for the loan of money. A property cannot be transferred without the bondholder's consent.

### **Mortgage Bond - Cancellation**

If the Seller has a mortgage bond registered over the property then this bond must be cancelled before the property can be transferred. Any outstanding amounts must be settled out of the proceeds of the sale. There is also a cancellation fee charged by the relevant attorney.

### **Occupation Date**

This is the date specified in the Deed of Sale by which the Seller undertakes to vacate the property and hand over possession to the Purchaser.

### **Occupational Interest / Occupation Rental / Occupational Consideration**

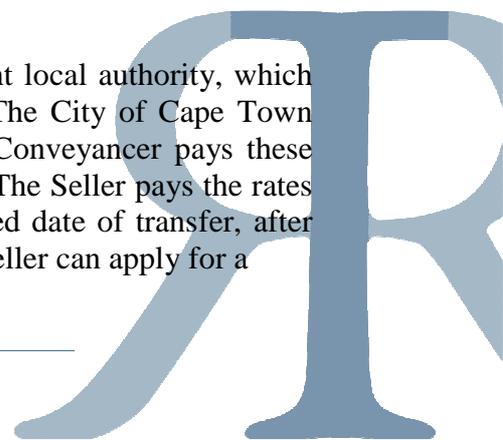
This is the 'rental' that is paid to the other party should either party, who is not the registered owner, be in occupation of the premises.

### **Plumbing Certificate / Certificate of Compliance of Water Installation**

This a certificate issued by an accredited Plumber that states that the water meter at the property is registering, that there are no defects which can cause water to run to waste and that there is no ingress of rainwater into the sewerage system. It is obtained by the Seller and must be submitted to the City Council on registration of transfer.

### **Rates Clearance Certificate**

This is the certificate that the Conveyancer obtains from the relevant local authority, which confirms that the rates and utilities have been settled in advance. The City of Cape Town requires that rates and utilities be paid 120 days in advance. The Conveyancer pays these monies up front to obtain the Municipality's consent to the transfer. The Seller pays the rates for the full period but is only liable for those up until the anticipated date of transfer, after which the Purchaser becomes liable. On registration of transfer, the Seller can apply for a



refund in the case of any overpayment in respect of amenities up to and after the date of transfer.

### **Registration of Transfer**

This is the ultimate goal of the Conveyancing Process and is that moment when the property is finally registered in the Deeds Office into the name of the Purchaser. From that moment onwards the Purchaser becomes the full owner of the property.

### **Risk**

In most cases, the risk, which is the responsibility for the property, passes from the Seller to the Purchaser on the date of registration of transfer. From that date, the Purchaser is responsible for rates, taxes and all other levies on the property. It is important to check the terms of the Deed of Sale carefully because it may be that even though the Purchaser is in possession of the premises, the Seller might still bear the risk in respect of the premises and must ensure that that the property is adequately insured, etc.

### **Transfer Duty**

This is the tax that is paid to the Receiver of Revenue and is regulated by the Transfer Duty Act. It is payable on transactions that are not subject to VAT on the acquisition of property by all persons, including close corporations and companies and trusts.

The rate of transfer duty is calculated on the purchase price or the fair market value of the property, whichever is the higher.

The transfer duty payable on the purchase of property on or after 23 February 2011 would be calculated in terms of the following table:

<b>Value of property</b>	<b>Transfer duty rate</b>
On the value of the property that does not exceed R600 000:	0%
On the value of property that exceeds R600 000, but not R1 000 000:	3%
On the value of property that exceeds R1 000 000, but not R1 500 000:	R12 000 plus 5% on the value exceeding R1 000 000
On the value of property that exceeds R1 500 000:	R37 000 plus 8% on the value that exceeds R1 500 000

### **NB: Time Frames for Payment**

In order to ensure that the transfer process proceeds as expeditiously as possible it is crucial that as and when monies are requested for rates, levies (if applicable), transfer duty and other costs that these amounts be paid over timeously i.e. within 3 working days of the request.

Should you have any questions regarding the above please feel free to contact us.

