



BUYING OR SELLING A HOUSE

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR

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 guidelines:

- Examine the house thoroughly. Enquire about the roof, gutters, electrical wiring, foundation etc. Should you have any doubts at all, consult an expert to examine the house. Should there be any defects, provide in the deed of sale for their correction by the seller at his cost.
- Before you sign a deed of sale, give the document to your 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 or valuation of the property and of 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 the purchase price and / or other costs, make the sale subject to the obtaining of 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 the 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 pending transfer and for safekeeping in a special savings account until 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 asset 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 the seller to consult and appoint his/her own attorney (rather than the agent's attorney) before signing a contract so that the property is transferred without delay.

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

Follow these guidelines:

- Keep your house and the premises neat and clean so that it is attractive to prospective buyers.
- Consult your attorney concerning your rights and 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.

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- 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 the 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 organise the finances and ensure that you receive your money.

The following is a list of the most 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 the 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) of 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 provision that the buyer pays all transfer fees.
- The name of your attorney handling the transfer.
- The date of taking possession and occupation.
- The provision 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 visible or hidden faults).
- The commission due and the name of the estate agent.

- Should the date of occupancy be before the date of transfer, ensure that the buyer pays interest on the sale figure 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 in writing and signed by both parties.

- Whether a beetle-free certificate should be obtained (Cape provinces and Kwazulu-Natal) and if so who should pay for the inspection and any work required.

- Any special conditions, for example:
 - A list of any articles excluded from the sale.
 - Whether the sale is subject to the buyer obtaining a bond or the sale of the buyer's 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.

↑ 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 which continues through to the ultimate registration of ownership and the reconciliation of finances and payments.

'Fixed property' is any land, whether it is unimproved or improved by the addition, for example, of a house, farm or 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 has been admitted by the High Court as an attorney, may practise as a conveyancer. All conveyancers are, therefore, also attorneys, but not all attorneys are necessarily conveyancers.

***Who appoints a 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 sale agreement, can be varied as a result of negotiation between the parties.*

The purchaser may also appoint a conveyancer to advise him or her, but these charges will be over and above the conveyancing costs submitted by the seller's conveyancer, who will be doing the actual transfer.

In terms of the Estate Agents Code of Conduct in the Estate Agency Affairs Act, 1976, no estate agent shall without good and sufficient cause, directly or indirectly, solicit, encourage, persuade or influence any party or potential party to a pending or a complete transaction to utilise or refrain from utilising the service of any particular attorney, conveyancer or firm of 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 or sale of a fixed property is probably the most important contract undertaken by individuals.

The law, therefore, provides that only qualified conveyancers may attend to the transfer of fixed property and related transactions. This is not only to give proper protection to the rights and interest of the public, but also to safeguard the integrity of the South African land registration system, which is universally regarded as one of the best in the world.

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 to the property.

What recourse do you have if the conveyancer fails to do the job?

Conveyancers are subject to the disciplinary powers of the law society of the province in which they practise. Law societies will act in the interest of the public. A complaint may be lodged with the relevant law society.

If someone believes that a 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 the loss.



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