

# SOLE OR OPEN MANDATE

## OPEN MANDATE

When a seller chooses to appoint various estate agencies to market his property, it is called an open mandate. It may or may not be in writing and various agents are given a non-exclusive right to market a property. Usually there is no defined time limit.

## SOLE MANDATE

A sole mandate must, by law, be in writing. It is an agreement whereby a single agent is granted the sole/exclusive right to market a property. The agent has a limited time period, usually 3 months, to find a purchaser.

## WHICH IS PREFERABLE?

There is undoubtedly added value to marketing your home through one agency. They take full responsibility for marketing your home and would use their resources to the fullest extent within the set time frame.

On the other hand, a seller may believe that using several agents may result in a better deal.

# KNOW YOUR RIGHTS AS A PROPERTY OWNER

## IS AN OFFER TO PURCHASE LEGALLY BINDING?

Yes, an offer to purchase is a document in which a purchaser makes an offer to purchase a property, and as such is binding on the purchaser as offeror. Once the offer is accepted by the seller, the offer becomes an agreement and both the seller and purchaser are then bound to the terms thereof.

## WHAT DOES IT MEAN TO SELL A PROPERTY 'VOETSTOOTS'?

If a property is sold 'voetstoots', it means the property is sold as it stands. The seller cannot be held liable for any defects in the property once it is sold, unless he fraudulently hid the existence of the defect from the purchaser. The position is more complex if the Consumer Protection Act applies to the sale.

## CAN I EVICT A TENANT IF HE OR SHE REFUSES TO PAY RENT?

No, you will need a court order to evict a tenant if he or she is in breach of the lease agreement.

## WHAT STEPS SHOULD I TAKE IF I WANT TO EVICT A TENANT?

If there has been a breach of the lease agreement, urge your tenant to correct the matter. If that doesn't work, lodge a complaint with the rental housing tribunal or contact an attorney.

# YOU AND STBB

STBB is one of South Africa's largest and most experienced property law firms and we pride ourselves on providing a personal and dedicated service to our clients.

We are committed to delivering on the following:

- We undertake to get your transfer through on time. Sometimes delays are caused by other role players over which we have no control. Should this happen, we further undertake to make every effort to smooth away the hurdles and speed up the process, as we know that a delay in the transfer date may have negative financial implications for you.
- We undertake to be available for any questions or queries, even after-hours. We know that questions don't keep office hours, so we make ourselves available any time of the day.
- We undertake to consult with you for free until the transfer is registered.

Why make selling your property or registering your bond any more complicated than it needs to be? Put your mind at ease – appoint the best!

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# USEFUL INFORMATION WHEN SELLING YOUR HOUSE

# CONVEYANCERS VS ATTORNEYS

## WHAT YOUR ATTORNEY DOESN'T KNOW CAN HURT YOU!

A conveyancer is an attorney who specialises in all matters related to property law and who has:

- qualified as an attorney after passing the necessary exams
- passed the necessary further conveyancing exam set by the Law Society
- been admitted as a conveyancer by the High Court of South Africa.

Not all attorneys are qualified as conveyancers and only qualified conveyancers may register property transactions in the deeds office.

Acquiring property is an important and expensive investment. Transferring not only title to the property but also security of title, is crucial. Conveyancers must ensure that:

- the transaction documents are 100% correct
- the seller owns the property and is capable of selling it
- the seller and purchaser have the contractual capacity to sell and buy
- the transaction is allowable in all respects.

## APPOINTING A CONVEYANCER: WHY IT IS THE SELLER'S RIGHT

The seller of a property is the party who has the right to nominate the conveyancing attorney that will attend to the registration of the transaction in the deeds office. Sellers, however, often take little interest in who is appointed as conveyancer because the purchaser pays the conveyancer's fee.

However, even though the purchaser finances the transaction costs, the election to nominate the conveyancer rests with the seller to ensure that the process is driven by the party who has the least interest in delaying transfer. A late transfer costs a seller money in lost interest and opportunity cost and, if transfer of the property sold was intended to occur simultaneously with property that the seller has purchased, delays can also cause much anxiety and embarrassment.

Clearly it is not only advantageous but crucial that the seller exercises discretion when appointing a conveyancer. Ask yourself: Is the conveyancer known and from an established firm? Does the conveyancer have adequate experience? Is the conveyancer prepared to assist with the sales transaction prior to the conclusion thereof? Does the firm have a sound track record?

Make sure that you appoint a professional conveyancer to take care of your biggest investment. Speak to STBB.

# A QUICK GUIDE TO THE BOND REGISTRATION PROCEDURE

## STEP 1: RECEIPT OF INSTRUCTIONS FROM BANK

- Receipt of instructions from the bank to register the bond. Usually the instructions are received electronically.
- Contact the client to confirm receipt of the instructions and request any documents required.

## STEP 2: PREPARATION OF DOCUMENTS

- If a transfer is involved – request a flysheet from the transferring attorney, issue guarantee requirements and obtain relevant FICA documents from client.
- Obtain a deeds office printout for the property and the client to check for any interdicts, insolvencies or other caveats that may be registered against the client or the property.
- If a further advance is involved, obtain the title deed from the bank and prepare the bond documents

## STEP 3: SIGNATURE OF DOCUMENTS

- On receipt of the flysheet and other documents, prepare the bond documents for signature.
- Contact the client and arrange for signature of the documents and payment of costs.

## STEP 4: GUARANTEES AND FICA

- Advise the transferring attorneys that the bond documents have been signed. Send guarantee, if requested, or advise of the amount available under the bond. Advise of position to lodge upon request or advise the transferring attorney of what is preventing lodgement.
- Comply with any of the bank's pre-lodgement requirements and check FICA compliance.

## STEP 5: LODGEMENT OF BOND DOCUMENTS

- If a further bond is involved, proceed with lodgement.
- If a transfer is involved, lodge on request of the transferring attorney.
- The deeds take seven to ten days to be examined in the deeds office, whereafter they come up for registration. The conveyancer then has five days in total to register the bond.
- If a further bond is involved, the bond is handed in for registration and registered on the following day. If a transfer is involved, the transfer and bond attorneys arrange the date of registration, within the five-day period.

## STEP 6: REGISTRATION

- On the day of registration, the bond attorney arranges with the bank to have the bond proceeds paid and registers the bond with the other linked transactions. The transferring attorney is handed a cheque for the bond proceeds at the deeds office.
- If there is a guarantee, the transferring attorney will present it for payment after registration has taken place. The bank and client are advised of registration.
- In the case of a further bond, the bond proceeds are paid to the client in terms of his payment instructions.

## STEP 7: DELIVERY OF BOND DOCUMENTS

- Once the bond has been numbered and microfilmed, it is delivered to the bond attorney from the deeds office. This can take up to three months.
- The bond attorney then obtains the title deed from the transferring attorney, if applicable, and delivers the title deed, bond and other security documents to the bank. If no transfer is involved, only the bond documents are delivered to the bank.

# A QUICK GUIDE TO THE CONVEYANCING PROCEDURE

## STEP 1: RECEIPT OF DEED OF SALE

- Acknowledgement of receipt. Deeds office search and copy of title deed requested.
- Apply to municipality for rates figures and valuation certificates.
- Apply for levy figures from body corporate and consent from home owners' association (if applicable).

## STEP 2: FULFILMENT OF SUSPENSIVE CONDITIONS

- Follow up on fulfilment of suspensive conditions, e.g. bond approval or sale of purchaser's property.
- If property is bonded, make sure seller's bank is advised of the transaction and requested to issue cancellation instructions.
- Collect necessary documentation from seller and purchaser and draft transfer documents.

## STEP 3: SIGNATURE OF DOCUMENTS AND PAYMENT OF COSTS

- Seller and purchaser sign transfer documents. Purchaser signs bond documents (if applicable).
- Purchaser pays transfer (and bond, if applicable) costs. Seller pays rates, including advance rates, for rates clearance certificate.
- Apply for transfer duty receipt, rates clearance certificate and levy certificate (if applicable).

## STEP 4: COMPLIANCE CERTIFICATES

- Seller to provide a plumbing certificate (if property falls within the jurisdiction of the City of Cape Town municipality) as well as an electrical, beetle, gas and electric fence certificate (if applicable).

## STEP 5: GUARANTEES AND FICA

- Ensure satisfactory guarantees in place for purchase price.
- Check FICA compliance.

## STEP 6: LODGEMENT OF DEEDS AT DEEDS OFFICE

- Upon receipt of transfer duty receipt, rates and/or levy clearance certificate(s), as applicable, and original title deed, arrange with linked bond cancellation and bond attorneys for simultaneous lodgement.
- Deeds lodged at the deeds office and allocated a barcode for tracking purposes. Deeds examined.
- Examination process takes seven to ten working days.
- On about the seventh or tenth working day, the deeds appear in the prep room and are 'up for registration'. The conveyancer has five working days to finalise any outstandings and hand in for registration the next day.

## STEP 7: REGISTRATION

- Once handed in, the deeds appear in the execution room.
- Conveyancer registers the deeds at 10h00.
- Ownership passes from seller to purchaser. Purchaser's new bond (if applicable) is registered. Seller's existing bond (if applicable) is cancelled.
- Final accounts drawn for the seller and purchaser. Seller paid out net proceeds. Agent's commission paid.

## STEP 8: DELIVERY OF DEEDS

- Once registered, the deeds are numbered and microfilmed. It can take up to three months for the deeds office to deliver original title deed and mortgage bond back to the conveyancer. Once delivered, the conveyancer will send original title deed to the relevant bank (if the property is bonded) or purchaser (if unbonded).