

# SPIRITED TRANSPARENT BALANCED BUSINESS

Property Guide  
Your key to buying property

# THE FIRM

ESTABLISHED IN 1900, STBB IS A FIRM OF APPROXIMATELY 100 BUSINESS-MINDED LAWYERS PRACTISING FROM 11 OFFICES THROUGHOUT SOUTH AFRICA.

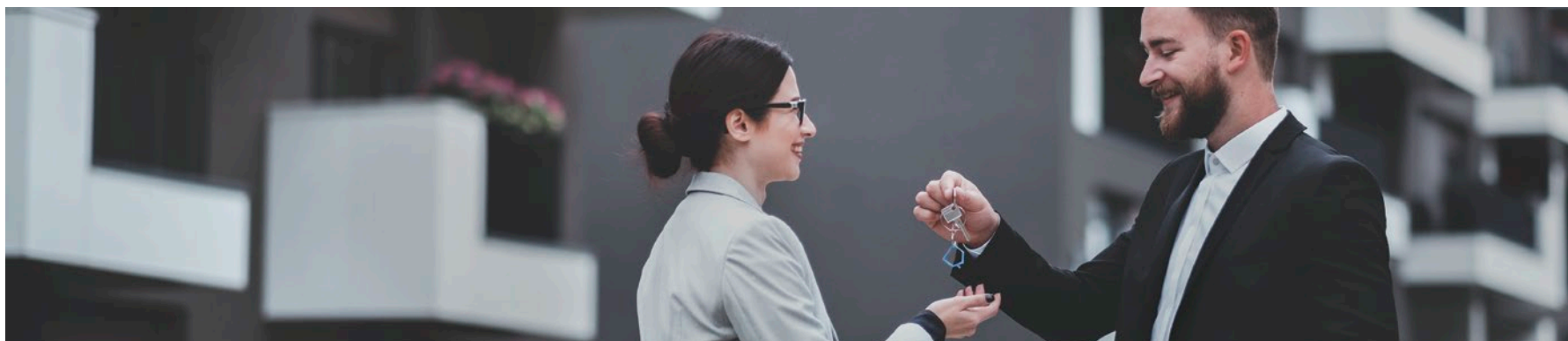
BY UNDERSTANDING OUR CLIENTS' NEEDS AND OBJECTIVES, WE STRIVE TO DELIVER COST-EFFECTIVE LEGAL SOLUTIONS FOR ALL BUSINESS AND PERSONAL MATTERS. WE ARE COMMITTED TO DEVELOPING CLOSE WORKING RELATIONSHIPS WITH OUR CLIENTS, ENABLING US TO SUCCEED CONSISTENTLY ON THEIR BEHALF.



## CONTENTS

- A quick guide to the property transfer process 2
- Transfer and bond costs explained 4
- The 'Big 5' certificates of compliance 10
- Capital gains tax 12
- Appointing a conveyancer: why it is the seller's right 15

## A QUICK GUIDE TO THE PROPERTY TRANSFER PROCESS



### 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 clearance 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 electrical, beetle, gas and electric fence certificates (if applicable).

### STEP 5

#### GUARANTEES AND FICA

- Ensure satisfactory guarantees are 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 purpose. 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 the 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 to the Purchaser (if unbonded).



## TRANSFER & BOND COSTS EXPLAINED

### TRANSFER COSTS

Transfer costs refer to the costs a purchaser pays in order to effect transfer of the property into his name. As a rule of thumb you should make allowance for an additional 8% to 10% of the amount of the purchase price of the property to cover all the costs involved in purchasing a home (excluding the deposit).

#### 1. TRANSFER DUTY

This is a tax levied by the Receiver of Revenue on the acquisition of property by a buyer. It generally constitutes the major portion of the costs involved.

- It is payable once off, before transfer of the property, to the conveyancing attorney who will then pass it on to SARS.
- If the buyer resells the property prior to taking transfer, transfer duty will be payable in respect of both sales.

#### 2. CALCULATION

- There is no differentiation between natural persons and entities in calculating the amount.
- For properties with a purchase price of up to R1 million, no transfer duty is payable.
- From R1 000 001 to R1 375 000, transfer duty is calculated at 3% on the value above R1 million (In other words, you don't pay transfer duty on the first R1 million, only on the portion that exceeds this amount.)

- From R1 375 001 to R1 925 000, transfer duty is calculated at 6% on the value above R1 375 000 PLUS a flat rate of R11 250.
- From R1 925 001 to R2 475 000, transfer duty is calculated at 8% on the value above R1 925 000 PLUS a flat rate of R44 250.
- From R2 475 001 to R11 000 000, transfer duty is calculated at 11% on the value above R2 475 000 PLUS a flat rate of R88 250.
- From R11 000 000 upwards, transfer duty is calculated at 13% on the value above R11 000 000 PLUS a flat rate of R1 026 000.

#### 3. VAT

If the seller is registered as a VAT vendor and the property forms part of this business, no transfer duty is payable. In such a case, the seller must include VAT in the purchase price.

#### 4. CONVEYANCER'S FEE FOR THE TRANSFER

The fees payable to a conveyancer for registering the transfer of ownership in the property are called transfer fees. The amount is determined on a sliding scale according to the purchase price of the property. The fees on the sliding scale are based on tariffs recommended by the Legal Practice Council. Fees may include VAT.

The fees are payable to the conveyancing firm once off and before registration of transfer of the property into the name of the purchaser.



#### 5. DEEDS OFFICE REGISTRATION FEE

This is the fee charged by the Deeds Office for registering the transfer and recording that you are the new owner of the home. The amount is fixed and is determined by a sliding scale based on the amount of the purchase price.

#### 6. PROVISION FOR MUNICIPAL RATES & TAXES/LEVIES

This charge relates to those rates and taxes or levies that need to be paid in order to obtain a rates clearance certificate or levy clearance. It is payable, before transfer of the property, to the transferring attorney who will pass it on to the local authority/managing agent.

#### 7. OCCUPATIONAL INTEREST (OCCUPATIONAL RENT)

In most instances an agreement of sale will determine that occupational interest is payable if the buyer takes

occupation of the property before transfer. The amount of occupational interest can either be a fixed amount (usually calculated as either the amount of the seller's bond repayment on the property or 1% of the purchase price) or an amount subject to an escalation if registration of transfer has not taken place within a certain period.

#### 8. POSTAGE & PETTIES

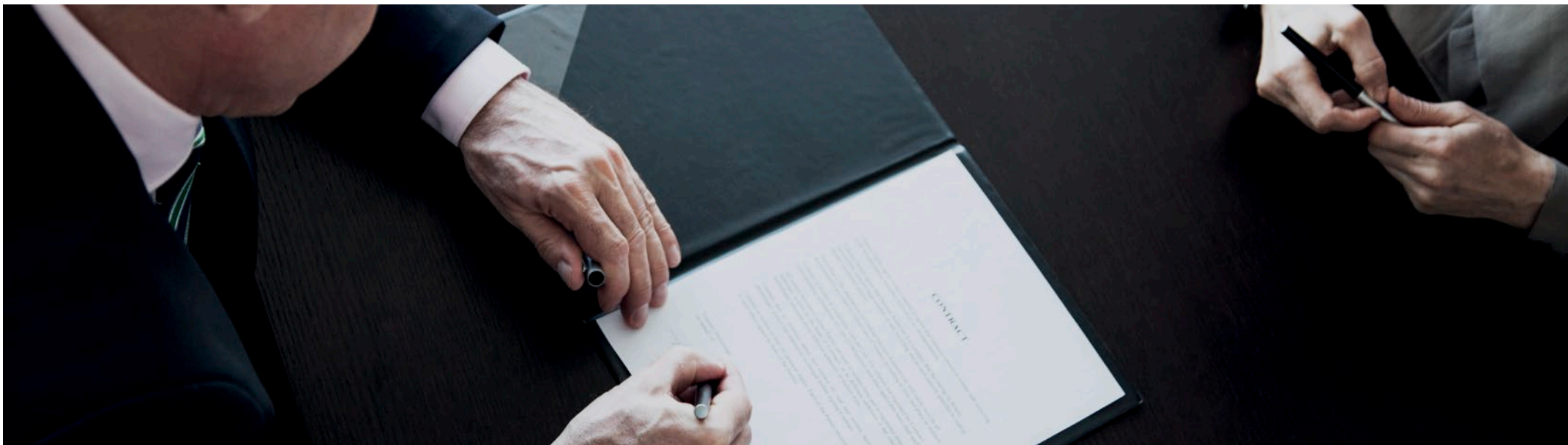
The transferring attorneys charge a levy to cover small expenses such as the posting and delivering of secured documents to the various role players, printing, faxes and telephone calls sent and received and the like. Each law firm has its own rates but it averages R1 265 (VAT included).

#### BOND COSTS

**Bond costs refer to the costs payable by the borrower (usually the purchaser) to the attorney registering the bond.**

#### 1. CONVEYANCER'S FEES

These are the fees that are payable to the attorney charged with registering your mortgage bond (the bond attorney). The amount varies according to the capital of your home loan amount. The fee is based on tariffs recommended by the Legal Practise Council and will be subject to VAT. The fees are payable once off before registration of your bond to the bond attorney.



## 2. HOME LOAN INITIATION FEE

This fee is charged by the bank for the processing of the home loan application. You can expect to pay a fee of approximately R5 985 depending on the value of the loan.

It is payable on registration of your bond, and could be debited from your home loan account depending on the bank's internal rules.

## 3. ADMINISTRATION AND SERVICE FEE

This is the fee that is charged by the bank to administer the home loan account. You can expect to pay between R17 and R57 per month, depending on whether you have taken out the bank's in-house homeowners' insurance.

Generally the service fee is less if you make use of the bank's insurance. It is payable monthly and will be debited from your home loan account.

## 4. HOMEOWNER'S INSURANCE

The bank will insist that you take out a homeowner's insurance policy to cover the risk of damage to the property that may result from natural disasters, such as fire or storm damage.

The amount payable will vary depending on the value of your property. It is payable monthly and will most likely be debited from your home loan account. The bank will then pass the amount on to the insurance company.

## 5. HOME LOAN PROTECTION INSURANCE

If you do not already have a life assurance policy to cede as additional security for the loan, you may be required to take out some form of home loan protection insurance, such as:

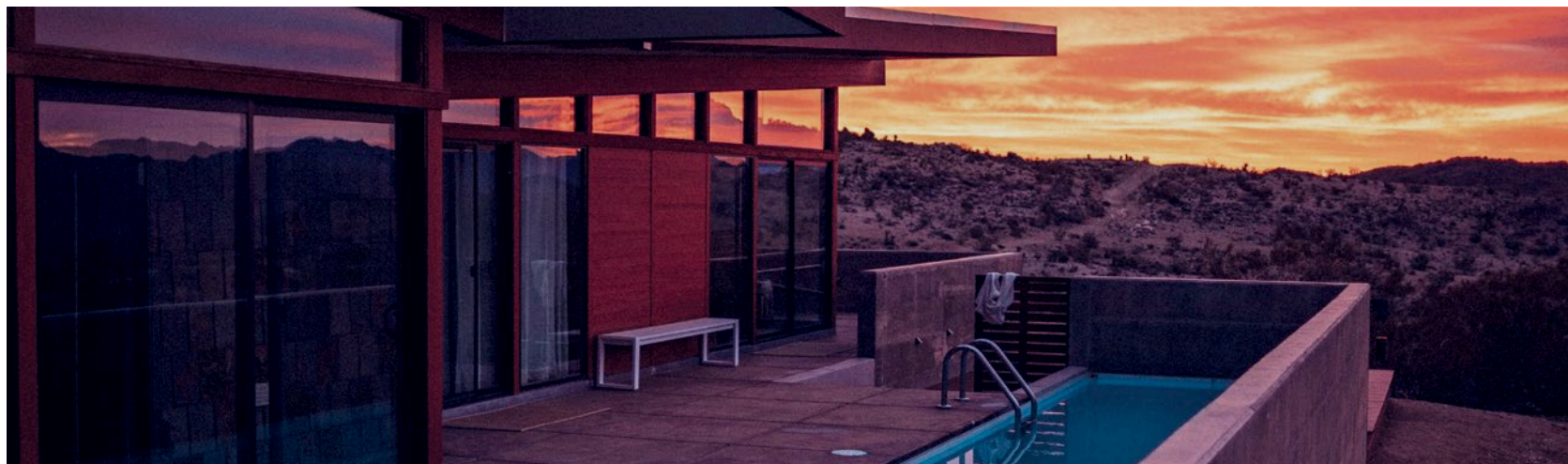
- Death Only
- Disability Only
- Retrenchment Only
- Death & Disability
- Death & Retrenchment
- Disability & Retrenchment
- Death, Disability & Retrenchment

The value of the policy will depend on the balance owing under your home loan. It is payable monthly and will most likely be debited from your home loan account.

## BOND CANCELLATION COSTS

**If there is an existing bond over the property, then the seller is liable for the fees pertaining to the registration of the bond cancellation.**

## THE 'BIG 5' CERTIFICATES OF COMPLIANCE IN PROPERTY TRANSACTIONS



Sale agreements can provide for up to five different types of compliance certificates to be obtained by the seller before a property transfer is registered. These may be required in both conventional and sectional title transactions.

Here follows a summary of the important aspects of each compliance certificate.

### 1. ELECTRICAL

- Certifies that the electrical installation on the property complies with the required safety standards.
- Governed by the Occupational Health and Safety Act.
- Valid if issued less than 2 years prior to transfer. However, if any modification was made to the installation after the certificate was issued, a new certificate must be obtained.
- Best for the inspection and remedial work to be carried out as soon as possible after the deal is concluded, and prior to the purchaser moving in.

### 2. ELECTRIC FENCE

- The certificate must be obtained on installation, and if any change or amendment is made, a new certificate must be obtained.
- Certifies that the electric fence installation complies with the required safety standards.
- Governed by the Occupational Health and Safety Act.
- An existing certificate may be transferred by the seller to the purchaser. A seller need only provide a new certificate to the purchaser if a change was made to the installation after the current certificate was issued.

- The requirement also applies to sales of sectional title units if there is an electrical fence system situated on common property

### 3. GAS

- The certificate must be obtained on installation, and if any change or amendment is made, a new certificate must be obtained.
- Certifies that the gas installation on the property complies with the required safety standards.
- Governed by the Occupational Health and Safety Act.
- A new certificate must be obtained every time there is a change of ownership.
- Parties cannot contract out of this or agree to waive.
- Seller is required to obtain the certificate prior to transfer.

### 4. WATER/PLUMBING

- Certifies that the water installation at the property is in line with municipal and building guidelines.
- Governed by the City of Cape Town Water By-law. Only applicable to

transfers within the municipal jurisdiction of the City of Cape Town.

- A new certificate must be obtained upon change of ownership.
- Parties cannot contract out of this or agree to waive.
- Seller is required to submit the certificate to the City of Cape Town municipality prior to transfer

### 5. BEETLE

- Usually valid for 3 to 6 months only.
- When there is a change of ownership this certification is often called for; it is not obligatory.
- Certifies that the accessible wood of permanent structures on the property is free from certain wood destroying beetles.
- Not governed by any specific law, but a practice that has evolved over the years.
- Parties can contract out of this; however, if parties agree that no certificate is necessary and bank requires it for purchaser's bond, then this is for the purchaser's expense.

## AT WHAT RATE IS CGT CALCULATED?

When immovable property is disposed of, the seller becomes liable for the payment of capital gains tax (CGT) on any profit made in respect of that property after 1 October 2001, which is the date on which this tax was first introduced in South Africa.

	2019*	2020**
Individuals and special trusts	18%	18%
Companies	22.4%	22.4%
Other trusts	36%	36%

If a capital loss is made on disposal of the property, it may be offset against any capital gains made in that year of assessment and, if no capital gains have been made, the loss may be carried forward to subsequent years of assessment, but will be reduced in each year carried forward by the annual exclusion.

For individuals, the first R40 000 of their capital gain or loss will be exempt and thus disregarded. This figure increases to R300 000 in the year in which an individual dies.

### ARE NON-RESIDENTS ALSO LIABLE TO PAY CGT?

Yes. Non-residents are liable for the payment of CGT on the profit realised from the disposal of any immovable property owned by them in South Africa, or on the disposal of an interest of at least 20% in the share capital of a company where 80% or more of the net asset value of the company is attributable to immovable property.

### S35(A) OF THE INCOME TAX ACT:

In order to facilitate collection of CGT from non-residents, our Income Tax Act requires

a buyer, who is purchasing property from a non-resident, to withhold a certain percentage of the purchase price and to pay this percentage to SARS on registration of transfer. Important to note is that the legislation places an obligation on the estate agent and/or conveyancer to disclose this payment responsibility to the buyer and to withhold the funds.

### HOW MUCH MUST BE PAID?

If the sales price exceeds R2 million:

- 7.5% must be withheld if the seller is a natural person and a tax non-resident;
- 10% must be withheld if the seller is a non-resident company or close corporation;
- 15% must be withheld if the seller is a non-resident trust.

If the amount withheld exceeds the non-resident's CGT liability, the balance will be returned to the non-resident by SARS, but only upon an assessment raised by SARS indicating a refund following the non-resident filing a tax return with SARS. This tax return can only be filed when the filing season opens, which is 4 months after the end of the tax year of the year within which the property had been disposed of. No interest accrues on this refund to be made by SARS.

Non-resident sellers can ask us to apply to SARS for a CGT directive, prior to the registration of the transfer, in which case payment of the amount shown on the directive, and not the percentages shown above, is made to SARS, eliminating the delay of waiting on the refund and

ensuring that the seller receives a greater portion of the proceeds sooner.

### HOW IS PROFIT CALCULATED?

A capital gain is calculated by deducting the base cost from the proceeds on disposal of the property. Disposal includes a sale, donation, exchange, vesting of the property in a beneficiary of a trust, or emigration.

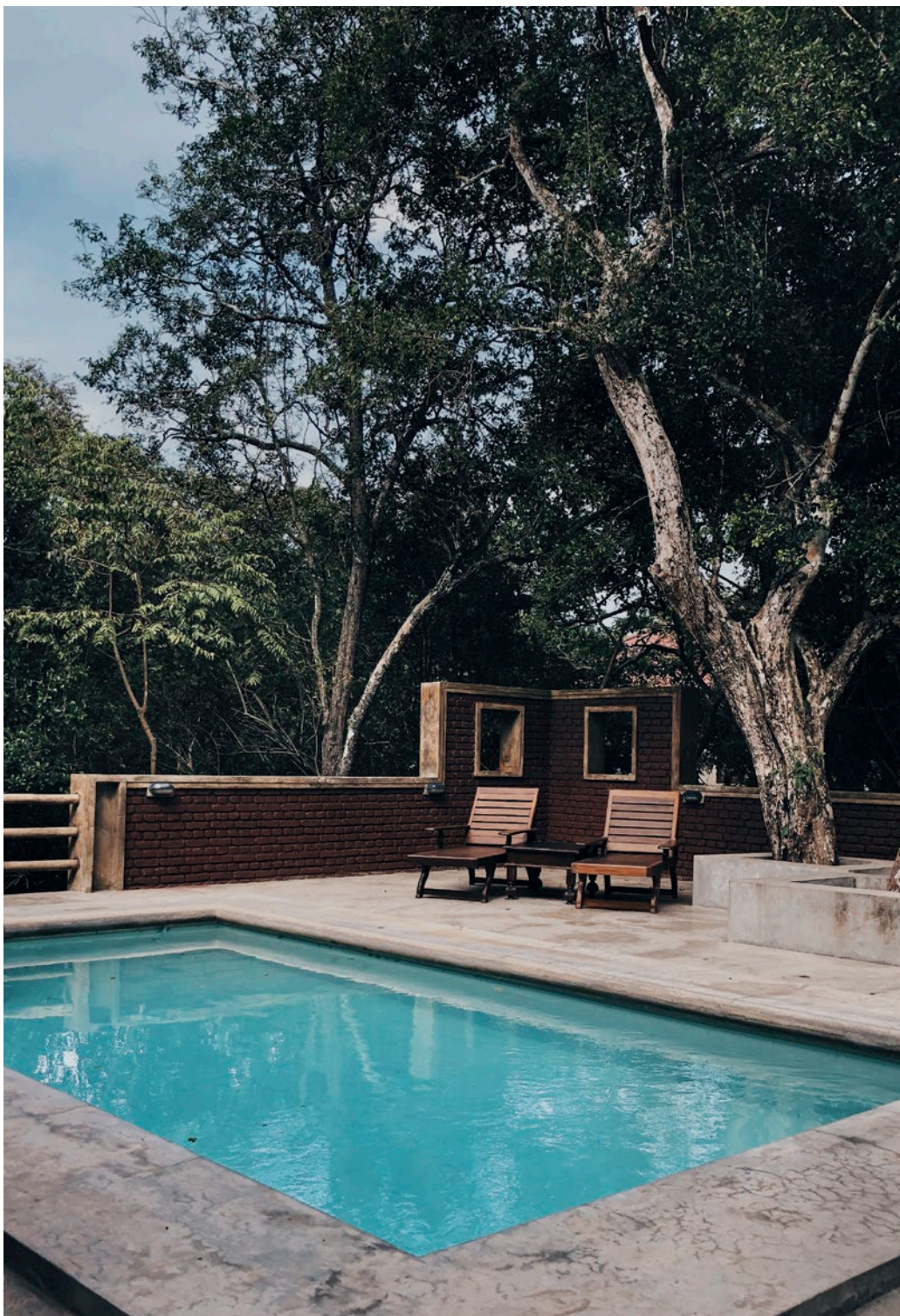
### The following may be included in the base cost:

1. The cost of acquiring the property, including the purchase price, transfer costs, transfer duty, VAT and professional fees (e.g. paid to attorneys and surveyors);
2. The cost of improvements, alterations, renovations, etc., but excluding any repairs and maintenance and only where the costs and payment thereof can be proved by presentation of invoices/receipts; and
3. The cost of disposing of the property, including agent's commission, advertising costs, valuation costs (including valuing the property for CGT purposes) and professional fees.

Expenditure on repairs, maintenance, insurance, and rates and taxes is not deductible. It is therefore essential to maintain accurate records of the above costs.

If such records are not retained, no deduction from the proceeds will be allowed when determining the capital gain.





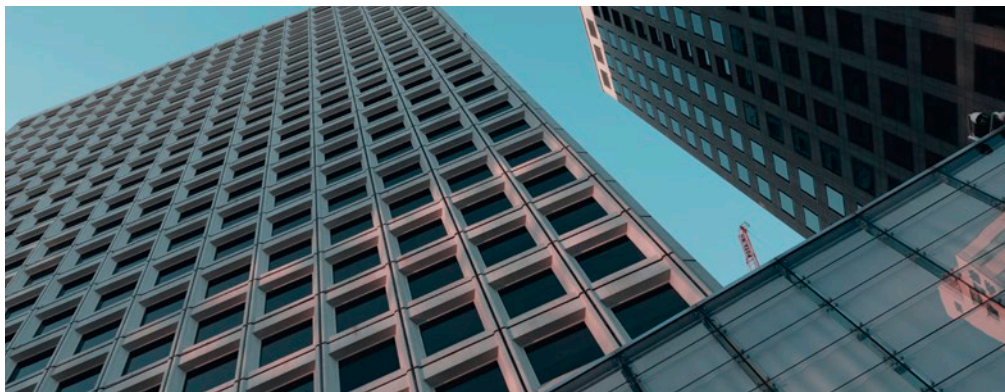
## APPOINTING A CONVEYANCER: WHY IT IS THE SELLER'S RIGHT

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 a 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.**



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