

**PROPERTY GUIDE:
YOUR KEY TO
BUYING PROPERTY**

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LOOKING FOR SOMETHING SPECIFIC?

- A quick guide to the property transfer process
- Transfer and bond costs explained
- The 'Big 5' certificates of compliance in property transactions
- At what rate is capital gains tax calculated?
- Appointing a conveyancer: Why it is the seller's right

A QUICK GUIDE TO THE PROPERTY TRANSFER PROCESS

STEP 1

RECEIPT OF THE AGREEMENT OF SALE

- The conveyancer, specifically the transferring attorney, acknowledges receipt of the agreement of sale. A Deeds Office search of the property is conducted and a copy of the title deed is requested.
- The conveyancer applies to the municipality for rates clearance figures and valuation certificates.
- The conveyancer applies for levy clearance figures from the body corporate or consent from the homeowners' association, if applicable.

STEP 2

FULFILMENT OF SUSPENSIVE CONDITIONS

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

STEP 3

SIGNATURE OF DOCUMENTS AND PAYMENT OF COSTS

- The seller and purchaser sign the transfer documents. The purchaser signs bond documents, if applicable.
- The purchaser pays transfer (and bond) costs. The seller pays the rates, including advance rates, to obtain the rates clearance certificate.
- The conveyancer applies for the transfer duty receipt, rates clearance certificate, and levy clearance certificate, if applicable.

STEP 4

COMPLIANCE CERTIFICATES

- The seller must provide a plumbing certificate (if property falls within the jurisdiction of the City of Cape Town) as well as electrical, beetle, gas, and electric fence certificates, if applicable.

STEP 5

GUARANTEES AND FICA

- The conveyancer ensures that satisfactory guarantees are in place for the purchase price.
- The conveyancer checks that the parties comply with the requirements of the Financial Intelligence Centre Act 38 of 2001.

STEP 6

LODGEMENT OF DEEDS AT DEEDS OFFICE

- Upon receipt of the transfer duty receipt, rates and/or levy clearance certificate(s), as applicable, and original title deed, the conveyancer arranges with the linked bond cancellation and bond attorneys for simultaneous lodgement.
- The deeds are lodged at the Deeds Office and allocated a barcode for tracking purposes. The deeds are examined.
- The 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 conveyancing attorneys have five working days to finalise any outstanding items and hand in for registration.

STEP 7

REGISTRATION

- Once handed in, the deeds appear in the execution room. The conveyancer registers the deeds at 10h00.
- Ownership passes from the seller to purchaser and the Deeds Office captures the transaction details. The purchaser's new bond (if applicable) is registered. The seller's existing bond (if applicable) is cancelled.
- The final accounts are drawn for the seller and purchaser. The seller is paid out the net proceeds. The agent's commission is 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 conveyancers. Once delivered, they will send the original title deed to the relevant bank (if the property is bonded) or to the purchaser, if the property is not bonded.

TRANSFER & BOND COSTS EXPLAINED

TRANSFER COSTS

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

1. TRANSFER DUTY

This is a tax levied by the South African Revenue Services ('SARS') on the acquisition of property by a purchaser. It generally constitutes the major portion of the costs involved.

- It is payable once-off – before transfer of the property – to the conveyancer who pays it over to SARS in order for a transfer duty receipt to be issued.
- If the purchaser 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 as purchasers in calculating the transfer duty payable.
- For properties with a purchase price of up to and including R1 100 000, no transfer duty is payable.
- From R1 100 001 to R1 512 500, transfer duty is calculated at 3% of the value above R1.1 million (in other words, you don't pay transfer duty on the first R1.1 million, only on the portion that exceeds this amount.)
- From R1 512 501 to R2 117 500, transfer duty is calculated at 6% of the value above R1 512 500 PLUS a flat rate of R12 375.
- From R2 117 501 to R2 722 500, transfer duty is calculated at 8% of the value above R2 117 500 PLUS a flat rate of R48 675.
- From R2 722 501 to R12 100 000,

transfer duty is calculated at 11% of the value above R2 722 500 PLUS a flat rate of R97 075.

- From R12 100 001 upwards, transfer duty is calculated at 13% of the value above R12 100 000 PLUS a flat rate of R1 128 600.

3. VAT

If the seller is registered as a VAT vendor and the property forms part of their 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 the 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 the tariff recommended by the Law Society of South Africa ('the LSSA'). Fees may include VAT.

The fees are payable to the conveyancing firm once-off and before registration of the 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 the purchaser is the new owner of the property. The

amount is fixed. It is determined in accordance with a sliding scale and is based on the purchase price.

6. PROVISION FOR MUNICIPAL RATES AND 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 and, if applicable, a levy clearance certificate. It is payable before transfer of the property, to the conveyancer 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 purchaser takes occupation of the property before transfer. The amount of occupational interest is either 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 time period.

8. POSTAGES & PETTIES

The conveyancer, specifically the transferring attorney, charges 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, messenger services, and the like. Each law firm charges its own rates.



BOND COSTS

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

1. CONVEYANCER'S FEES

These are the fees that are payable to the attorney charged with registering the mortgage bond (the bond attorney). The amount varies according to the capital of the purchaser's home loan amount. The fee is based on the tariff recommended by the LSSA and is subject to VAT. The fees are payable once-off before registration of the 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. A purchaser can expect

to pay a fee of approximately R6000 depending on the value of the loan.

It is payable on registration of the bond, and may be debited from the purchaser's 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. A purchaser can expect to pay between R17 and R57 per month depending on whether they have taken out the bank's in-house homeowners' insurance.

Generally, the service fee is less if the purchaser makes use of the bank's insurance. It is payable monthly and will be debited from their home loan account.



4. HOMEOWNERS' INSURANCE

The bank will insist that the purchaser takes 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 the property. It is payable monthly and will most likely be debited from the purchaser's home loan account. The bank will then pass the amount on to the insurance company.

5. HOME LOAN PROTECTION INSURANCE

If a purchaser does not already have a life insurance policy to cede as additional security for the loan, they 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 the home loan. It is payable monthly and will most likely be debited from their home loan account.

BOND CANCELLATION COSTS

If there is an existing bond over the property, 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's 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.
- A current certificate is valid if

it was 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.

- It is best for the inspection and remedial work to be carried out as soon as possible after the sale is concluded, and prior to the purchaser moving in.
- (Fixed system) inverters also require COCs which are valid up until any changes are made to the electrical board or when the property is sold where updated COCs are required.

2. ELECTRIC FENCE

- This certificate must be obtained upon installation of an electric fence and if any change or amendment is made, a new certificate must be obtained.
- it certifies that the electric fence installation complies with the prescribed 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 obtain



a new certificate 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 the common property.

3. GAS

- This certificate must be obtained upon installation of a gas appliance on the premises, and if any change or amendment is made thereto, a new certificate must be obtained.
- It certifies that the gas installation on the property complies with the prescribed safety standards.
- Governed by the Occupational Health and Safety Act.
- A new certificate must be obtained each time there is a change of ownership.

4. WATER

- 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 and is only applicable to transfers within the municipal

jurisdiction of the City of Cape Town.

- A new certificate must be obtained each time there is a change of ownership.
- The seller is required to submit the certificate to the Municipality of the City of Cape Town 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.
- It certifies that the accessible wood of permanent structures on the property is free from certain wood-destroying beetles.
- There is no legal provision making this certificate compulsory, but it is a practice that has evolved over the years.
- The parties can contract out of this. However, if they agree that no certificate is necessary and the bank requires it in respect of the purchaser's bond, then this is for the purchaser's expense.

AT WHAT RATE IS CAPITAL GAINS TAX 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.

2024	
Individuals & special trusts	18%
Companies	21.6%
Other trusts	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 is 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 the collection of CGT from non-residents, the Income Tax Act 58 of 1962 requires a purchaser, 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. It is important to note that the legislation places an obligation on the estate agent and/or conveyancer to disclose this payment responsibility to the purchaser 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 non-resident individual;
- 10% must be withheld if the seller is a non-resident company;
- 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 them by SARS. However, this will only occur upon an assessment raised by SARS indicating a refund following the non-resident filing a tax return with SARS. Further, this tax return may 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 the refund to be made by SARS.

Non-resident sellers can ask us to apply to SARS for a tax 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. This eliminates the delay of waiting for the refund and ensures 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. fees paid to attorneys and surveyors);
2. The cost of improvements, alterations, and renovations, 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 the 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 transferring 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 the 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, including lost interest, and, if the 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. In this respect, the seller should ask themselves: Is the conveyancer known and from an established firm? Does the conveyancer have adequate experience? Is the conveyancer prepared to assist with the sale transaction prior to the conclusion of the sale agreement? Does the firm have a sound track record?

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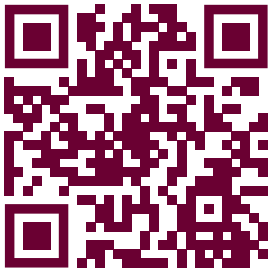
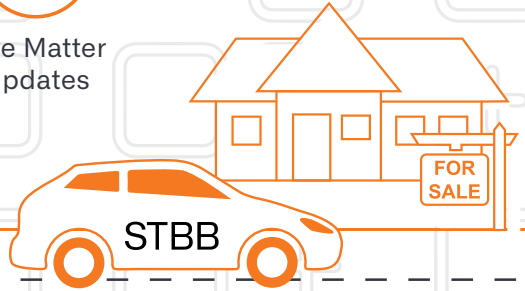
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