



KRUGER ATTORNEYS &
CONVEYANCERS INC

LEGAL GUIDE TO
**BUYING
& SELLING**
PROPERTY



PREPARING
TO SELL



SELLING YOUR
PROPERTY



BUYING A
PROPERTY



TRANSFER
PROCESS

ABOUT US

Kruger Attorneys & Conveyancers Incorporated boasts experienced Attorneys, Notaries and Conveyancers who use custom-made technology to streamline the conveyancing process, thereby maximising efficiency and ensuring transparency.

We provide conveyancing services to transfer any immovable property from Sellers to Purchasers throughout South Africa. We have a national footprint with offices and associates in Johannesburg (Randburg and Edenvale), Pretoria, Cape Town and Durban.

WHAT MAKES US DIFFERENT?

- Our team of Attorneys and Conveyancers are proactive – we ensure that you deal directly with your designated Attorney/Conveyancer from inception of your transfer to registration.
- A web-link is provided enabling you to do real-time tracking of your transfer's progress.
- Receive weekly client-centered progress reports on key milestones achieved.
- Clear communication ensures you understand our process in its entirety, with transparency and valuable information being our top priority.



**We look forward to building a
relationship with you!**



PREPARING TO SELL

PREPARING THE PROPERTY FOR SALE

It is recommended that every effort be made to make the property as presentable as possible. It's all about first and lasting impressions. Decluttering, rearranging furniture and personal effects strategically may enhance the Purchaser's perspective of the property.

GIVE THE BANK NOTICE ON YOUR BOND

If you are preparing to sell your property and there is currently a bond registered in favour of a financial institution, the National Credit Act provides that the institution may charge you 90 days of interest as a penalty if the bond is to be cancelled.

To minimize the value of such penalty, we recommend that you notify the bank in writing as soon as possible of your intention to sell the property and to cancel the existing bond. The penalty amount reduces daily as the 90-day period reaches its end.

MUNICIPAL ACCOUNTS & LEVY STATEMENTS

It is important to peruse your latest municipal accounts and levy statements to ensure that all the correct charges are reflected thereon and that the billing is correct.

Any disputes must be attended to without delay to enable the Conveyancing Attorneys to obtain the necessary clearance certificates during the transfer process.

APPROVED BUILDING PLANS

Banks granting mortgage bonds to Purchasers often require a copy of the municipally approved building plans for the property which should reflect the property's current layout.

Should you not have approved plans, and these are requested during the transfer process, this may delay the transfer by several weeks or months.

BODY CORPORATE OR HOMEOWNERS ASSOCIATION RULES AND FINANCIALS

If you are selling a property in a sectional title scheme or which forms part of a homeowners' association, it is recommended that you obtain a copy of the management and conduct rules to provide to any prospective purchaser.

This ensures that any rules which may be onerous to a prospective purchaser are known from the outset.

Banks granting mortgage bonds often require a copy of a sectional title scheme's latest audited financial statements and these should readily available.

CONVEYANCING ATTORNEY

A Conveyancing Attorney is appointed in the Offer to Purchase to attend to the registration of the transfer. It would be beneficial to nominate Conveyancing Attorneys before or during the marketing of a property to avail oneself to expert legal advice and guidance even before the Offer to Purchase is concluded.



COSTS

The costs typically associated with the sale of a property include, if applicable:

- Agents Commission
- Existing Mortgage Bond (cancellation figures)
- Bond Cancellation Costs
- Clearance Certificates
- Compliance Certificates
- Certified Copy of the Original Title Deed
- Capital Gains Tax



SELLING YOUR PROPERTY



SELLER'S DISCLOSURE

The Seller is encouraged to disclose all the patent (known) and latent (unknown) defects which exist in the property to any prospective purchaser. This is achieved by completing a document known as a "Seller's Disclosure" which sets out various statements regarding the condition of the property.

It is imperative that this document be completed accurately and be provided to any prospective purchaser before an Offer to Purchase is concluded.

For clarity, "patent" defects are those which can be seen on a reasonable inspection of the property by the Purchaser, whereas "latent" defects are those which cannot be seen as easily during such inspection by the Purchaser. Examples of latent defects include a leaking roof or swimming pool and drainage issues.

POWER OF ATTORNEY

The transfer process necessitates signature of various original documents by the Seller. A Power of Attorney can be utilised if the Seller or any party acting on behalf of the Seller is unable to attend at the offices of the Conveyancing Attorney.

The most common instances where a Power of Attorney is used is when the Seller or any party acting on behalf of the Seller are travelling frequently, is based overseas, or is planning on emigrating.



OFFER TO PURCHASE

The signature of an Offer to Purchase signifies the initiation of the transfer process. It is imperative that the signatory to the Offer to Purchase has contractual capacity, i.e. legally entitled and authorised to enter into an agreement for the sale of the property.

Cognisance must be taken of the marital status of a Seller and in the instance of a company, close corporation or trust, the necessary authority by virtue of resolutions must be obtained. Sellers are also cautioned to give special attention to the Fixtures and Fittings clause in the Offer to Purchase. It is imperative that this clause is completed accurately and any fixtures or fittings which the Seller anticipates excluding from the sale must be reflected clearly in this clause.

FICA DOCUMENTS

The Financial Intelligence Centre places stringent obligations on Estate Agents and Conveyancing Attorneys. In order to ensure compliance with these onerous requirements, you may be requested to complete or provide various documents, such as:

- Questionnaires
- Identification Documentation
- Proof of Residence (Utility Bill)
- Proof of SARS Income Tax Registration
- Proof of Marital Status
- Proof of Banking Details
- Proof of your authority to act on behalf of an entity or to act on behalf of someone else

COMPLIANCE CERTIFICATES

A legal obligation to provide various compliance certificates exists when a property is being sold and transferred. These compliance certificates must be obtained by the Seller, at his own cost, from a reputable and registered service provider to ensure that they are accepted by the Conveyancing Attorneys.

These include:

- Electrical Compliance Certificate
- Gas Conformity Certificate of Compliance
- Electric Fence System Certificate of Compliance
- Plumbing Installation Certificate (Western Cape)
- Entomologist Certificate (Coastal Regions)



RATES AND LEVY CLEARANCE CERTIFICATES

The Conveyancing Attorneys are obliged to lodge a rates clearance certificate in the Deeds Office which must be valid until at least the date of registration of the transfer.

The Conveyancing Attorneys will obtain rates clearance figures from the municipality which typically include an estimated forward projection for a period of 4 months in respect of rates, refuse, water, sewerage and electricity.

If the property being sold forms part of a sectional title scheme or homeowners association, a levy clearance certificate must be obtained to certify that all levies due have been paid in full. The existence of any special levies must be disclosed to the prospective purchaser.

BUYING ANOTHER PROPERTY

It often happens that the Seller of a property wishes to purchase another property before the registration has been finalised. If the purchase of the property is financially dependent on the sale proceeds, we urge the Seller to safeguard against any contractual obligations which do not align with the timeframes or expectations of the initial Offer to Purchase.

It is important to ensure that there is reference to the sale of your current property by means of a clause in the new offer to purchase making it conditional upon the sale of your current property.

Provide the Estate Agent dealing with the property being purchased a copy of the Offer to Purchase. It is often possible for the Conveyancing Attorneys to register both the sale and purchase by the Seller simultaneously.





MOVING OUT

Sellers must prepare well in advance for the eventual move from the property. This is often a daunting undertaking which requires proper planning and execution. Offers to Purchase typically provide for occupation of the property on date of registration of transfer.

The Conveyancing Attorneys may be able to predict with reasonable certainty the date of registration to allow the Sellers and Purchasers to make the necessary arrangements.

It may worthwhile for parties to agree on a date of occupation leading up to lodgement of the transfer at the Deeds Office by either allowing early occupation of the property by the Purchaser or allowing the Seller to stay until a defined date after registration. Occupational rent will be payable in these instances.

Your Conveyancing Attorney will be able to assist with facilitating this agreement on a moving date and the occupational rent shall payable as set out in the Offer to Purchase.

FINAL STEPS

Once the Sellers have vacated the property and the transfer registration has been finalised, the Conveyancing Attorneys will provide written confirmation of the change of ownership.

Sellers must inform the municipality and other utility or service providers to close any existing accounts and process any refunds which may be due. Conveyancing Attorneys may recommend service providers to attend to this on the Seller's behalf.



BUYING A PROPERTY

OFFER TO PURCHASE

The Offer to Purchase is signed by the Purchaser and presented to the Seller for consideration and acceptance. Upon acceptance of the Offer to Purchase by the Seller, the Purchaser must take the necessary steps to comply with all obligations set out therein.

FINANCING YOUR PURCHASE

The purchase of a property can be financed in a number of ways. The first option is a cash purchase, where the full purchase price is secured by means of a cash payment or bank guarantee from readily available funds.

The most common method of financing a property is by obtaining a mortgage bond from a financial institution. This is a lengthy process and necessitates various documents being made available to the financial institution for consideration. This includes FICA documents, bank statements, recent payslips, audited financials and tax returns.

Utilising a bond origination company is recommended as this allows for more than one financial institution to be approached simultaneously, thus providing for a greater degree of options and improved likelihood of success. The bond originator will assist in obtaining the most competitive offer on behalf of the Purchaser.

Another method of financing a property is the reliance on proceeds of sale of another property. In these instances, it is strongly recommended that a letter be obtained from the Conveyancing Attorneys confirming the estimated proceeds from the sale to ensure that sufficient funds are available, together with an indication as to when these funds may be anticipated.

It is important to ensure that there is reference to the sale of your current property by means of a clause in the offer to purchase making it conditional upon the sale of your current property.

COSTS

The costs typically incurred by the Purchaser of immovable property, include:

- Transfer Costs (including transfer duty payable to SARS)
- Mortgage Bond Registration Costs
- Initiation Fees (payable to the financial institution granting the bond)
- Levy Clearance Certificate Fee
- Provision for Pro-rata Levy Contribution

FICA DOCUMENTS

The Financial Intelligence Centre places stringent obligations on Estate Agents and Conveyancing Attorneys. In order to ensure compliance with these onerous requirements, you may be requested to complete or provide various documents, such as:

- Questionnaires
- Identification Documentation
- Proof of Residence (Utility Bill)
- Proof of SARS Income Tax Registration
- Proof of Marital Status
- Proof of Banking Details
- Proof of your authority to act on behalf of an entity or to act on behalf of someone else

RISK AND BENEFIT

The Offer to Purchase generally stipulates that risk and benefit in and to the property pass from the Seller to the Purchaser on date of registration of transfer. Therefore, for as long as the property is still registered in the name of the Seller, the Seller will be liable for its insurance and maintenance.

Purchasers are reminded that homeowners' insurance must be obtained with effect from date of registration of transfer, from which date all risk and benefit now vests with the Purchaser.

MOVING IN

Purchasers must prepare well in advance for the eventual move into the property. This is often a daunting undertaking which requires proper planning and execution. Offers to Purchase typically provide for occupation of the property on date of registration of transfer.

The Conveyancing Attorneys may be able to predict with reasonable certainty the date of registration to allow the Sellers and Purchasers to make the necessary arrangements.

It may be worthwhile for parties to agree on a date of occupation leading up to lodgement of the transfer at the Deeds Office by either allowing early occupation of the property by the Purchaser, or allowing the Seller to stay until a defined date after registration. Occupational rent will be payable in these instances.

Your Conveyancing Attorney will be able to assist with facilitating this agreement on a moving date and the occupational rent shall be payable as set out in the Offer to Purchase.

FINAL STEPS

Once the Sellers have vacated the property and the transfer registration has been finalised, the Conveyancing Attorneys will provide written confirmation of the change of ownership.

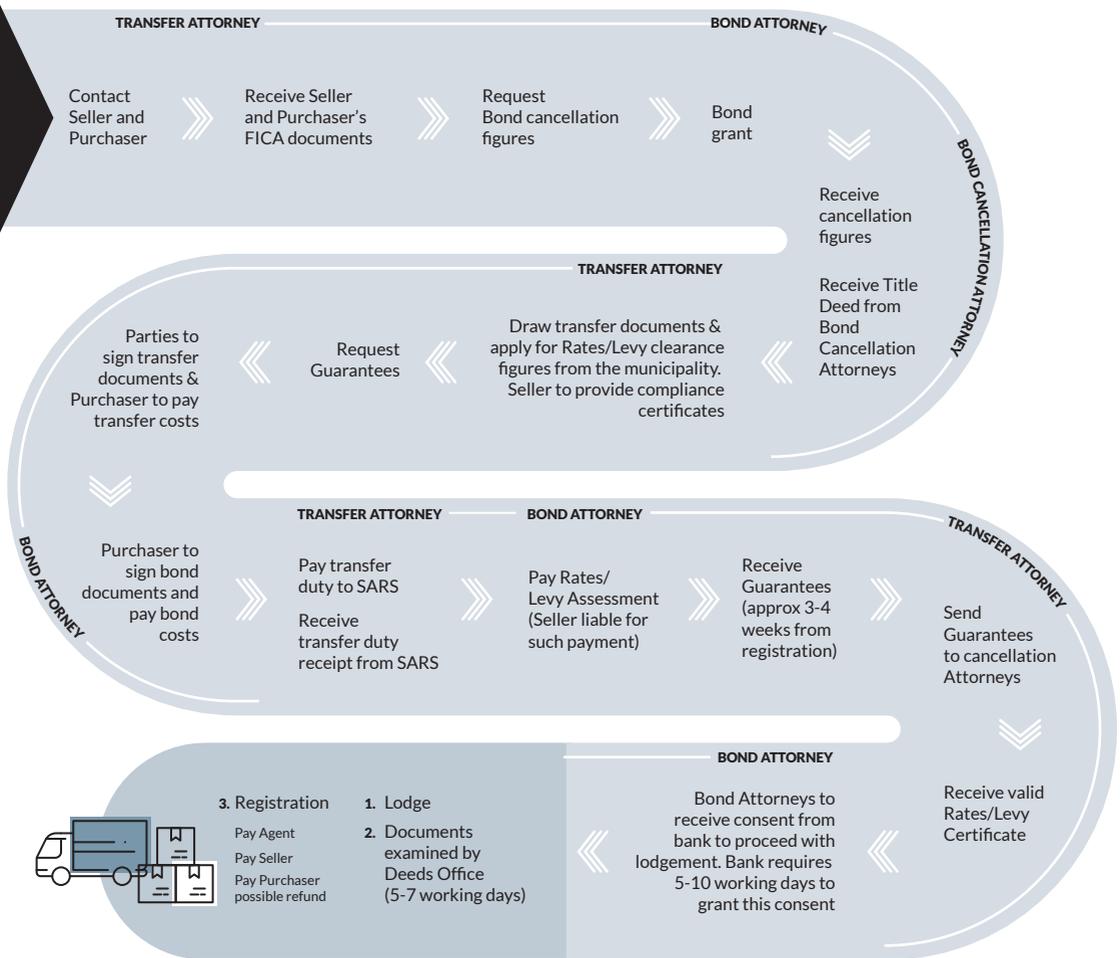
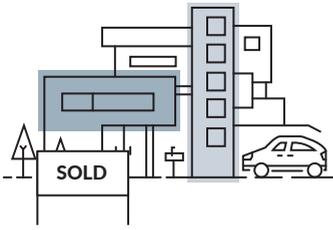
The Purchaser must inform the municipality and other utility or service providers thereof and open new accounts as are required. Conveyancing Attorneys may recommend service providers to attend to this on the Purchaser's behalf.



TRANSFER PROCESS

An average transfer in which a Seller has an existing bond to cancel and where the Purchaser will be registering a new bond, takes between 2 to 3 months to achieve registration in the Deeds Office.

This process involves three firms of attorneys - the Transfer Attorney, Bond Cancellation Attorney and the Bond Attorney who each attend to different aspects of the process simultaneously. The following steps can generally be expected.



GLOSSARY OF TERMS

The following terms are often used in the marketing, sale and transfer process of immovable property:

Acceptance of the Offer

On completion of an Offer to Purchase by a Purchaser, it is submitted to the Seller for acceptance. A standard clause of an Offer to Purchase is that the Seller has a defined number of days to accept the offer failing which it will lapse automatically.

Bank Guarantees

The Purchaser's bank will issue guarantees to the satisfaction of the Seller's bank for the settling of the outstanding amount due on the bond of the Seller, to be paid on registration of the transfer. Further guarantees are issued to the Conveyancing Attorneys for the balance to be paid to the Seller on registration of the transfer.

Bond

When money is lent by a financial institution to a Purchaser to fund the purchase of a property the financial institution records this agreement against the title deed of the property.

Bond Attorneys

Attorneys responsible for preparing the Purchaser's bond documents for signature and registering the bond in favour of the financial institution over the property.

Bond Cancellation Attorneys

Attorney responsible for the cancellation of any registered bonds over the Seller's Property.

Bond Cancellation Figures

The amount required by the financial institution to settle the bond account and cancel the registered bond over the Seller's property.

Compliance Certificates

Legally required certificates to be obtained by a Seller when selling a property, confirming that the property's Electrical Installation, Gas Installation, Electric Fence System and Plumbing Installation are all in good working order and comply with the relevant regulations. An Entomology Certificate confirms the property is free from infestation of pests.

Conveyancing Attorneys

Attorneys responsible for the transfer of the property from the Seller to the Purchaser.

Counter-Offer

On completion of an Offer to Purchase by a Purchaser, it is then submitted to the Seller for acceptance. Should the Seller find the Offer to Purchase unacceptable, the Seller has the option to return to the Purchaser with an amended Offer to Purchase to buy the property on alternative terms.

Deeds Office

The authority responsible for the registration and recordal of transfer of property, the management and maintenance of the property register in South Africa.

FICA Compliance

The Financial Intelligence Centre Act places an obligation on accountable institutions such as Estate Agents and Attorneys to identify and verify their clients identities to combat fraud in South Africa.

Levy Certificate Clearance

The Body Corporate or Homeowners Association will certify the amount required to ensure the levy account has been settled until registration, and will then issue a certificate confirming payment has been made and the property may be transferred.

Lodgement

Once all the Attorney's documentation is prepared and finalised they are submitted to the Deeds Office for examination and registration.

Occupation

The date agreed to by the Seller and Purchaser in the Offer to Purchase for the handing over of the property to the Purchaser. It is commonly agreed to be on the date of registration of the transfer.

Occupational Rent

Rental payable by either the Seller or the Purchaser to whoever is the registered owner at the time of taking occupation of the property.

Offer to Purchase

The formal offer made by a Purchaser to a Seller setting out the terms on which the Purchaser is prepared to Purchase the Seller's Property. Once accepted by the Seller the Offer to Purchase becomes a binding agreement subject to the terms and conditions stipulated therein.

On Prep

The phase in the Deeds Office once the documents have been examined and are ready for registration. The Attorneys are allowed 5 days to get the necessary consents from the banks and clients to proceed with registration of the transfer of the property and to attend to any examiner queries.

Open Mandate

Instruction to market a property which can be given to many different estate agencies who cannot claim to have a sole right to market the property for sale.

Proceed to Lodge

Once the Bond and Bond Cancellation Attorneys have completed, collected and signed the documentation required, it has to be submitted to the banks for final approval and confirmation of lodgement.

Rates Clearance Certificate

The local Municipality will certify the amount required to ensure the account has been settled until registration and will then issue a certificate confirming payment has been made and the property may be transferred.

Rates Clearance Figures

The local Municipality will issue figures reflecting the amount required for settlement of the municipal account based on the current amount owed, plus an estimated forward projection for a period of 4 months in respect of rates, refuse, water, sewerage and electricity.

Rejection

A submission to the Deeds Office can be rejected during examination of the documents, if there are substantial errors in the documents. The batch of documents will need to be amended and reloaded.

Sole Mandate

Instruction to market a property which is given to only one estate agency to exclusively market the Seller's property for sale for a defined period.

Suspensive Conditions

Conditions stipulated in the Offer to Purchase which need to be satisfied before the sale of the property can proceed, such as the granting of finance by a financial institution.

Title Deed

The written legal document confirming a person's right and title to a specific property and the right to deal with the property.

Transfer Duty

Acquisition tax payable by the Purchaser for the purchase of the property, payable to SARS.

VAT

Value Added Tax is payable on property transactions only in specific instances such as the Seller being VAT registered.



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