

EASY GUIDE

TO

BUYING

OR

SELLING

A HOUSE



1. INTRODUCTION

- 1.1 Buying a home is probably one of the biggest financial decisions a person can make during their lifetime and unfortunately this big decision is made with very little formal guidance or experience.
- 1.2 The purpose of these notes is to properly prepare you to buy or sell a home.

2. PURCHASER

- 2.1 A home can be purchased by:
 - 2.1.1 an individual, unmarried or married out of community of property; or
 - 2.1.2 jointly by parties married in community of property; or
 - 2.1.3 any other trading entity such as a Company, Partnership or Trust.
- 2.2 It is important for the Purchaser to be sure of the identity of the Purchaser and to convey this to the Estate Agent.
- 2.3 If the Purchaser is married in community of property, the property would be purchased in their joint name.

2.4 If a couple is married out of community of property (ANC) then they can choose to either purchase the property in one of the parties names or in both their names. However, if they want to purchase the property in both their names they will have to specify this as the property will not be automatically registered in both their names.

2.5 If a Trust or Company is purchasing the property then the Purchaser must indicate the full details of the Trust or Close Corporation with its registration number and most importantly indicate that he is simply a representative of the Company or Trust and not the Purchaser.

3. SELLER

The Seller must also clearly identify itself and in this regard you can check your title deed to establish exactly who is the owner of the property and that will be the Seller.

4. ESTATE AGENT

4.1 The Estate Agent is responsible for introducing the Seller and Purchaser and is entitled to Commission if a sale is concluded.

- 4.2 The Estate Agent's commission is normally paid by the Seller and is included in the Purchase Price.
 - 4.2.1 If the Purchaser is to pay the Estate Agent's commission then this must be expressly agreed between the parties.

- 4.3 It is always advisable to have a written Mandate (agreement) between the Seller and the Estate Agent to ensure that there are no disputes with regards to commission.

- 4.4 The Estate Agent is normally given a Sole Mandate or a Multi Mandate.
 - 4.4.1 A Sole Mandate appoints one (1) Estate Agent who has the right to introduce Purchasers to your property for a period of about three (3) months and excludes other agents or introductions. If you sell your home during this period through any other means, the Estate Agent will still be entitled to commission.

 - 4.4.2 A Multi Mandate, is where a number of Estate Agents are given a Mandate to sell your property and whoever sells the home is entitled to commission or a commission split.

4.5 Estate Agents are negotiable with their commission but the negotiations must take place before the Mandate and the Offer to Purchase is signed.

5. CONVEYANCER

5.1 The conveyancer is a special attorney who prepares the documents to transfer ownership of the property from the Seller to the Purchaser. There are normally three conveyancers involved, namely:

5.1.1 The transferring conveyancer who prepares the title deed to be registered at the deeds office in order for ownership in the property to be transferred from the Seller to the Purchaser;

5.1.2 The bond conveyancer, who prepares the bond documents on behalf of the Purchaser's bank, which bond is registered simultaneously with the transfer;

5.1.3 The bond cancellation conveyancer, who acts on behalf of the Seller's bank in order to cancel the bond over the property.

- 5.2 The transferring attorney is appointed by the Purchaser in the Province of KwaZulu-Natal, however it is becoming more acceptable for the Seller to appoint the transferring attorney.
- 5.3 The transferring attorney's fees are paid by the Purchaser.
- 5.4 The bond conveyancer is appointed by the Purchaser's bank and the fees of the bond attorney are paid by the Purchaser.
- 5.5 The bond cancellation conveyancer is appointed by the Seller's bank and the Seller is responsible for these fees.

6. OFFER TO PURCHASE

- 6.1 Estate Agents use a pre-printed Offer to Purchase and the essential details such as parties, property, price and payment are simply inserted therein.
- 6.2 It is important to note that immovable property cannot be sold by way of an oral agreement but must be contained in a deed of alienation signed by both parties to be valid.
- 6.3 The completion of the Offer to Purchase is important.

6.4 Before signing the Offer to Purchaser as a Purchaser, make sure of the following:

6.4.1 The details of the Purchaser are correct;

6.4.2 The details of the Seller are correct;

6.4.3 The details of the property are correct;

6.4.4 The Purchase Price is correct;

6.4.5 The amount of the deposit, if any, is correct;

6.4.6 The balance to be secured by way of a loan is correct;

6.4.7 The offer is signed and dated by the Purchaser;

6.4.8 As a Seller, before signing the offer to purchase, make sure that you have carefully read the Offer to Purchase, understand the terms thereof and are satisfied with the Purchase Price and the manner of payment.

6.5 Once the Seller has signed the Offer to Purchase, it becomes a binding an enforceable contract.

7. AMENDMENTS TO OFFER TO PURCHASE

Any amendments to the Offer to Purchase must be agreed upon by the Seller and the Purchaser to be binding and they must show that they have agreed by initialling and dating the amendments or both signing an addendum.

8. TRANSFER DUTY

- 8.1 Houses purchased for above R600 000.00 will attract Transfer Duty which is payable by the Purchaser to the South African Revenue Services (SARS) through the conveyancing attorneys.
- 8.2 The transfer duty is calculated as a percentage of the Purchase Price and the current rates are set out in the table below:

VALUE OF PROPERTY (Rand)	RATE
R0 – > R600 000	0%
R600 000 – > R1 000 000	3% on the value above R600 000, but not exceeding R1 000 000
R1 000 000 – > R1 500 000	R12 000 plus 5% on the value above R1 000 000, but not exceeding R1 500 000
R1 500 000 and above	R37 000 plus 8% on the value above R1 500 000

- 8.3 There is no distinction with regards to transfer duty between an individual or companies and trusts.
- 8.4 Therefore, when buying a home you need to be aware of the amount of Transfer Duty that you will need to pay and you should have sufficient funds to cover the Transfer Duty.

9. VAT

9.1 VAT is payable in certain circumstances when the property is of a commercial nature and is a going concern and both Purchaser and Seller are VAT vendors.

9.2 This is normally applicable to a block of flats which has tenants.

10. PURCHASE PRICE

10.1 As the Purchaser you must make sure that the Purchase Price is correctly recorded on the agreement and is the correct Purchase Price that you had in mind. The same applies to the Seller.

10.2 The payment of the Purchase Price is also important.

10.2.1 This is normally paid by way of a cash deposit and the balance through money lent from a bank in the form of a Home Loan and a mortgage bond registered over the property.

10.2.2 The full Purchase Price can also be paid in cash if the Purchaser has sufficient funds available.

10.2.3 Another alternative is to pay the Purchase Price from the proceeds of the sale of another home.

11. SUSPENSIVE CONDITIONS

11.1 If the property is going to be purchased by way of:

11.1.1 a loan from the Bank, or

11.1.2 the sale of another property.

it is important that a condition be put in the Offer to Purchase to give you the option to withdraw from the agreement without any obligation should the Home Loan not be approved or you do not sell your house.

11.2 These terms are called suspensive conditions and should you not obtain a loan or not sell your property within a certain period, then the Offer to Purchase lapses with no further obligation to purchase the property.

12. BREACH

It is very important that you know and understand your obligations in terms of the agreement, because if you fail to comply with the terms of the payment, the Seller can place you in breach which will entitle the Seller to additional interest from you a so called “mora interest” or go as far as cancelling the sale and claiming compensation from the Purchaser which may also include the Estate Agent’s commission.

13. COSTS

13.1 The Purchaser is liable for the transfer costs which will be the costs of Transfer Duty as well as all the attorneys costs. If the Purchaser raises a loan from a Bank to purchase the property he will also be liable to pay the mortgage bond attorneys costs.

13.2 The Seller is liable to pay the Estate Agent’s commission and if the property is bonded, bond cancellation attorneys fee.

14. VOETSTOOTS

14.1 The effect of a voetstoots clause, is reduced with the Consumer Protection Act (CPA) when purchasing from a developer as a developer sells property in the ordinary course of business.

14.2 However, when purchasing property from an individual, this is not subject to the CPA as the individual is not selling property in the ordinary course of business and therefore the Purchaser must carefully inspect the property for any defects as the Purchaser will have no recourse against the Seller if he later finds that there were defects.

14.3 If the Seller was aware of the defects and failed to disclose them to the Purchaser, the Purchaser will then have a claim to cancel the sale alternatively an amount to repair the defects and the Seller cannot rely on the voetstoots clause.

15. OCCUPATIONAL INTEREST

15.1 Occupational interest is a type of rental that a Purchaser pays the Seller if he takes occupation of the home before the transfer is registered in the deeds office.

15.2 A Seller can also pay occupational interest if the Seller is still in occupation of the premises after the transfer has been registered in the deeds office.

15.3 Therefore, it is important that an amount is inserted in the Offer to Purchase for occupational interest and that this amount is market related to avoid disputes if either party is in occupation prior to or after transfer being registered.

16. TRANSFER

16.1 The Purchaser will become the owner of the property on the date that the transfer is registered in the deeds office.

17. FITTINGS AND FIXTURES

17.1 Fittings and fixtures will automatically form part of the property sold.

17.2 Fittings and fixtures can be described as light fittings, built in cupboards and pool motors.

17.3 Movable property however will not form part of the Offer to Purchase unless it is expressly recorded in the agreement.

17.4 A good example of movable property is the pool cleaning equipment and patio furniture.

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ATTORNEYS/PROKUREURS