

## **WHY IS THE TRANSFER OF MY PROPERTY TAKING SO LONG?**

After signing a deed of sale, the purchasers often want to move into the property with great excitement and as soon as possible. When they are informed of the process involved prior to the property being transferred this may place a damper on their excitement. Coupled with this there may even be delays in the transaction. In order to avoid unnecessary frustration, it is vital that parties to the transaction understand the processes involved and that delays are sometimes inevitable. Besides possible delays there are a number of processes that need to be followed before a house can be registered in a purchaser's name.

At the outset, it must be determined if the deed of sale is valid and binding between the parties. If not, a valid and binding contract will first have to be concluded between the parties.

The deed of sale will normally be the starting point in a transaction for a conveyancer who has been instructed to attend to the transfer. This conveyancer is also known as the transferring attorney and is normally the main link between the other attorneys involved in the transfer transaction. Other attorneys involved are normally a bond attorney and/or bond cancellation attorney.

A major role of the transferring attorney is informing any mortgagees, for example banks, about the transfer so that any notice periods for the cancellation of bonds can start running. The notice period is normally up to 90 days. If the bond is cancelled before then, there could be penalties payable. The transfer may therefore be delayed as a result of the notice period.

If the purchaser will be registering a new mortgage bond to finance the transaction, a bond attorney will be appointed. Since the transferring attorney will not normally be aware of whom the instructed bond attorney is, the bank will usually inform the bond attorney of who is attending to the transfer. The bond attorney will then first make contact with the transferring attorney.

Obtaining the various certificates, receipts and consents applicable to the transaction in question also takes time. Examples of these are rates clearance certificate, transfer duty receipt, homeowners association's consent to the transfer, levy clearance certificate, electrical compliance certificate and plumbing certificate.

The transfer duty receipt is obtained from the Receiver of Revenue and should be lodged with all property transactions, even if no transfer duty is payable to the Receiver of Revenue. During 2013 it took approximately seven working days from the submission of the request, until the transfer duty receipt was issued.

The rates clearance certificate is obtained from the local municipality in the area where the property in question is located. The transferring attorney will first request the municipality to inform him of the amount they require in order to issue the certificate. After receipt thereof the amount can be paid and the transferring attorney will then await the issued certificate. The time this takes differs from municipality to municipality. In the City of Cape Town, during 2013, figures were mostly issued on the same day they were requested and the receipt was issued within approximately five working days after payment. This time frame is largely affected by whether or not the municipality works on an electronic system.

If the property is located in an area where a homeowners' association is established, there will normally be a title deed condition in terms of which the consent of the homeowners' association must be obtained prior to the transfer. The time it takes for obtaining this certificate differs from one homeowners' association to the other.

After an inspection by a plumber or electrician it may be found that certain work needs to be carried out before the certificates will be issued. If the work that must be carried out is extensive this can cause major delays with the transaction.

If the property is being sold by an executor of a deceased estate, the consent of the Master of the High Court must first be obtained before the property can be transferred. Major delays can be experienced if the Master of the High Court refuses to give such consent until certain requirements have been met.

Once the transferring attorney is satisfied that all relevant documents are in place he will arrange simultaneous lodgement at the Deeds Office by all attorneys involved in the transaction. It is therefore vital that the bond attorney has by this time obtained the required approval to lodge from the mortgagee and that the bond cancellation attorney has the required consents in place to cancel the existing bond/s on the property.

Once all the documents are lodged at the Deeds Office, an internal process is followed, which has different time frames in the various Deeds Offices. This time frame can also vary in a particular Deeds Office. It is best to enquire from your conveyancer what the Deeds Office time frame is at any given stage.

The list of possible delays in a transaction varies from one transaction to the other and the possibilities are endless. It is advisable to contact your conveyancer for an explanation should you feel that the process is taking too long.

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