

CHRISTO MULDER



ATTORNEYS, NOTARIES  
& CONVEYANCERS

# SELLER'S GUIDE TO SELLING IMMOVABLE PROPERTY

In order to facilitate a smooth sale and the subsequent transfer of immovable property there are a number of issues that should be considered by a seller prior to the marketing and sale of such property.

## DISCLOSURE

When selling immovable property your duty as the seller is to disclose all latent (hidden) defects in the property to your agent and prospective purchaser. This is an obligation which must be given serious consideration. Latent defects must be disclosed in writing in the sale agreement. Your purchaser has a corresponding obligation to inspect the property for all patent (visible) defects. A disclosure document can be used, however sellers must be careful to complete this comprehensively.



## DOCUMENTS

The following is an indicative list of documents that should be made available to your mandated estate agent and prospective purchaser.

SECTIONAL TITLE PROPERTY	FREEHOLD PROPERTY	CLUSTER PROPERTY
Title Deeds	Title Deeds	Title Deeds
Body corporate rules & financials (indicate restrictions imposed by the body corporate, e.g. pet ownership)	–	Home Owners's Association Documentation, Financials and Rules (indicate restrictions imposed by the HOA, e.g. pet ownership)
Sectional Title Plans	Approved SG Diagrams	Approved SG Diagrams
Details of reserved real rights or caveats registered over the scheme	Details of applicable servitudes	Details of applicable servitudes
Details of Exclusive Use areas (parking bays, garden areas, store rooms)	–	Home Owners Associations Levy Statement (may include water charges)
Rates and Utility Accounts	Rates and Utility Accounts	Rates and Utility Accounts
Levy Statements	Eskom Accounts (if supplied by Eskom)	Eskom Accounts (if supplied by Eskom)
Disclosure as to any pending / anticipated special levies		Disclosure as to any pending / anticipated special levies

## GENERAL DOCUMENTS

Additional documents to be made available:

Details of applicable servitudes

- **FICA Documents**  
These differ depending on the selling entity. For individuals these include proof of identity, proof of residence, confirmation of SARS tax number and banking account details.
- **Existing mortgage bond account number**
- **Copies of rates/municipal accounts (with municipal account numbers)**



## ISSUES TO CONSIDER

### CONTRACTUAL CAPACITY

If the registered owner of the property is a company, close corporation or trust, ensure that the correct resolutions are in place to authorise the transfer, Sellers should consult their conveyancer in this regard as the implications are important. If you are an individual, ensure the necessary matrimonial and other consents are obtained as may be applicable. If you are married according to the laws of a foreign country, the consent of your spouse is required to transfer the property.

### VAT REGISTRATION

If you are VAT registered, VAT must be clearly dealt with in the sale agreement such that it is clear as to whether the purchase price includes or excludes VAT. Obtain proper advice from an accountant or auditor before proceeding to enter into the sale agreement.

### APPROVED BUILDING PLANS

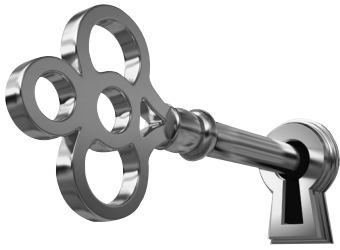
Disclosure must be made as to whether you are aware if the property sold has approved building plans or as to whether any part of the improvements on the property do not have approved plans.

### SECTIONAL TITLE I HOME OWNERS ASSOCIATION SPECIAL LEVIES

Sellers are liable for all levies due to the body corporate / homeowners association until date of registration of the transfer. Sellers should disclose if they are aware of any pending special levies or special levies which are in force at date of sale. Who is responsible for the payment of the special levies must be clearly indicated.

### FIXTURES AND FITTINGS

These are sold with the property and should these not be in working order, same should be disclosed in writing in your sale agreement. Caution must be exercised with regard to items which do not strictly fall within the definition of "fixtures and fittings". When in doubt, create certainty by clarifying in writing in the sale agreement whether the particular item is to remain or will be removed. Examples are hanging bathroom mirrors, blinds, window treatments etc.



## **SPECIAL POWER OF ATTORNEY**

The legal requirements of signing conveyancing documents outside of South Africa are onerous. Consideration should be given to as to whether it is appropriate to make use of a special power of attorney (SPA) when a seller is not going to be in SA to sign the necessary documents. In this regard it is critical to consult a conveyancing attorney to ensure that the deeds registry requirements are met when drafting and signing the SPA to ensure same is usable.

## **NATIONAL CREDIT ACT (NCA): BANKS 90 DAY INTEREST PROVISIONS**

Banks are entitled to charge 90 days interest in lieu of notice to cancel any mortgage bond. To avoid or to limit payment in this regard, sellers can give notice during the marketing phase. Sellers should make use of their chosen conveyancer for this purpose.

## **CONSEQUENCES OF CALLING FOR CANCELLATION FIGURES ON A MORTGAGE BOND**

Where the bond cancellation figures are called for from the seller's bank, this results in the bond account being “frozen” and funds cannot be accessed from the account (this is different from the notice discussed above).

## **NO EXISTING MORTGAGE BOND**

Where there is no existing bond, the sellers are required to have the original title deed available. Should this document be lost the conveyancer must be notified, such that application can be made for a replacement deed.

## **RATES CLEARANCE CERTIFICATES**

A rates clearance certificate (RCC) must be valid for 60 days from date at issue. Rates figures are issued by the local authority and represent the current balance due, and any arrears amounts together with 4 months advance payment for rates, taxes, sewerage, refuse, electricity and water charges (as applicable).

There are potential delays where billing errors exist. Sellers should provide their rates accounts to their chosen conveyancer during the marketing phase for early detection and correction of these billing issues so as to prevent delays occurring in the transfer process.

## **ESKOM**

Where electricity is supplied directly by Eskom, sellers need to finalise their accounts and purchasers need to attend at Eskom's offices to open a new account upon registration of transfer. Any amounts payable are not included in the rates clearance figures aforesaid.

## **COMPLIANCE CERTIFICATES**

The certificates of compliance which may be applicable to the sale of immovable property in Gauteng are an Electrical Compliance Certificate, a Gas Compliance Certificate and an Electric Fence Certificate of Compliance.

## **RISK AND INSURANCE**

The sellers should insure the property until the date of registration of transfer in the deeds registry.

## **ALTERATIONS I MAINTENANCE**

The seller has a general duty to maintain the property in the condition as at date of sale until registration and should not make any alterations to the property.

## COSTS

The following are costs / disbursements for which the seller may be liable or should make provision for depending on the sale and the type of property sold:

- Agent's commission - As agreed and accepted by the seller as set out in the sale agreement plus VAT at 14%
- Existing mortgage bond - this needs to be formally cancelled with transfer of the property;
- Attorney bond cancellation costs- paid to the attorney cancelling the mortgage bond ± R2 500.00
- Rates clearance costs - As set out above;
- Body corporate levies - These need to be paid to the end of the month of registration;
- Home owners association levies - these need to be paid to the end of the month or registration:
- Compliance certificates - where applicable. Electrical Compliance Certificates. Gas Compliance Certificates and Electric Fence Certificates of Compliance; and
- Lost title deed - Where this has been lost the cost of replacement is approximately R1 000.00

## CONVEYANCER

The seller may nominate the conveyancer who will attend to the transfer of the property to the purchaser. Sellers should involve the conveyancer upon making a decision to sell, such that they can contribute to the effectiveness of the sale and marketing process together with the estate agent. Sellers should be sure to utilise the services of an attorney who is a conveyancer and who understands the conveyancing process.

## CAPITAL GAIN TAX

The sale of immovable property may attract Capital Gains Tax (CGT). Should the property being sold be the seller's primary residence and registered in his/her name and the purchase price exceed R2 000 000.00, then the first R2 000 000.00 of the gain is exempt from CGT. There are various factors which influence the calculation the CGT payable to SARS and this should be discussed by the seller with his/her accountant / auditor for an accurate calculation.



*We strive for the highest quality and professionalism in everything we do!*

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