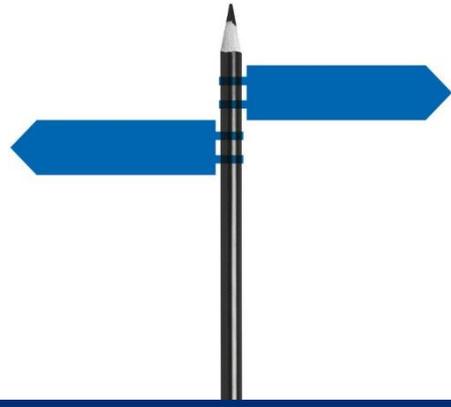


## Plotting the way forward

Tips and costs for buyers and sellers



### How can we help?

Purchasing property is invariably a sizable investment, and the transaction therefore requires some care. The law provides that only qualified conveyancers may attend to the transfer of fixed property and related transactions. This is not only to give proper protection to the rights and interests of the public, but also to safeguard the integrity of the South African land registration system, which is universally regarded as one of the best in the world.

Our lawyers have put together a guide which highlights a number of tips that should be considered when you are buying or selling a property and the expected costs involved.



### Tips for sellers

#### 1. Appoint a transferring attorney of your choice

The appointment is the seller's prerogative. It is improper for an estate agent to insert the details of a transferring attorney into an agreement without discussing the appointment with the seller.

#### 2. Agree on the estate agent commission

#### 3. Be cautious of early occupation by the buyer

Early occupation means occupation by a buyer before transfer. At the least, suspensive conditions in the agreement should be fulfilled before early occupation. If the conditions are not fulfilled then the agreement collapses and if the buyer is in occupation, then the seller will have to make sure that the buyer vacates the property.

#### 4. Avoid early termination interest

Provide your existing bond holder, generally your bank, with 90 days' notice when you terminate your existing property bond.

#### 5. Ensure there is a voetstoets clause

This protects you against liability for latent and patent defects on the property. The buyer acknowledges having had the opportunity to inspect the property and accepts the property in its present state.

#### 6. Make sure the plans of the property are approved

This includes any plans for renovations that have been carried out.

This will prevent delays from the municipality when issuing rates assessments.

#### 7. Tax payments must be up to date

Outstanding taxes by either the seller or the buyer leads to delays in issuing the transfer duty receipt.

#### 8. Compliance certificates

Various compliance certificates form part of the sales agreement. It is the seller's responsibility to obtain these compliance certificates, namely an electrical compliance certificate, an entomologist report, gas conformity and electric fence compliance certificates where applicable.



### Costs to expect as a seller

#### Estate Agent commission

The rate is dependent on the mandate between the seller and estate agent.

#### Settlement of the existing bond

This is the outstanding settlement amount on the seller's existing home loan.

#### Bond cancellation costs

Cancelling a bond incurs several fees namely: the bond cancellation attorney fees, deeds office registration fees and early termination interest, where applicable, on the bond settlement amount.

#### Compliance certificates

It is the seller's responsibility to pay for the inspection fees as well as the repair/treatment fees.

#### FICA verification

The conveyancer will verify your identity when the transfer documents are signed. The FICA documents requested by the conveyancer depend on who is selling the property, whether it's a private individual or juristic entity.

#### Pro rata share of rates and levies

The seller is liable for all rates and levies on the property until transfer date or unless otherwise stated in the sale agreement between the seller and the purchaser.

#### Deeds office property search fee

For sectional title properties it is necessary to acquire this report, this is to be done by your conveyancer and the deeds office lodging agents.



## Tips for buyers

### 1. Decide on the buying entity

Will the property be bought in the name of an individual, a trust or a company.

### 2. Ensure that you know the monthly rates and levies

Discuss this with the seller or the estate agent.

### 3. Check fixtures are in working order

Any fixtures that need repair prior to the transfer date should be recorded as a special condition in the sale agreement.

### 4. The zoning and title deed condition must meet the intended use of the property

Zoning certificates are issued by the municipality and can be obtained directly from their office, or through the seller or estate agent. In some cases, the title deed conditions may specify the zoning category of the property.

### 5. Are there any land claims?

Sellers must inform buyers of potential land claims. If there has been a land claim, the seller must notify the land claims department of the sale.

### 6. Property due diligence

A thorough due diligence may be necessary, depending on the intended use of the property. It is the buyer's responsibility to inspect the property and be aware of any defects.



## Costs to expect as a buyer

### Transfer costs

These are based on a gliding scale tariff as prescribed by the Legal Practice Council in accordance with the amount of the purchase price. If the buyer wants to negotiate these rates, then this should be done before the signature of the agreement.

### Lodging agent costs

These are based on a percentage of the transfer fees.

### Deeds office registration fee

These are based on a tariff issued by the Minister of Agriculture, Land Reform and Rural Development in accordance with the purchase price amount.

### Pro rata Rates and Levies

The purchaser is liable for all rates and levies on the property from the transfer date, unless otherwise stated in the sale agreement between the seller and the purchaser.

### Rates and Levies and Homeowners Association clearance certificates fee

Ensure that you cater for the time which it takes to process a transfer. It is recommended that your clearance certificates have a validity period of at least two to three months.

The conveyancer will obtain all the clearance certificates, from the body corporate in the case of a sectional title property and from the municipality in other cases.

### Transfer Duty/VAT paid to SARS

The transfer duty amount is calculated according to a formula, based on the purchase price of the property. The conveyancer will inform you of the transfer duty payable on the transaction. There are various permutations if the seller and/or buyer is VAT registered. If the seller is VAT registered, then the buyer will invariably pay VAT as opposed to transfer duty on the transaction.

### FICA Verification

The conveyancer will verify your identity when the transfer documents are signed. The FICA documents will be requested by the conveyancer and these will depend on whether the buyer is an individual or a juristic entity.

### Electronic documents generation fee

The transfer documents are generated using a specific conveyancing software program. The buyer is liable for the electronic document generation fee which usually ranges between R325.00 – R500.00.



## What can we do for you?

The lawyers in our real estate department focus on the following areas:

- registration of conventional & sectional title property ownership transfers (residential and commercial), consents and endorsements (for example legal entity conversions),
- property due diligence investigations (one of which was listed in the top 10 unlisted deals of 2019)
- registration of transactions in all Deeds Offices in South Africa
- replacement of lost title deed applications
- share block conversion transactions
- subdivision and consolidation transfers
- legal entity asset restructure transactions
- divorce transfers and endorsements
- deceased estate transfers



## For more information, please contact:



**Leroshia Naidoo**  
Senior Associate

**T:** +27 31 940 0501  
**M:** +27 84 534 3983  
leroshanaidoo@  
eversheds-sutherland.co.za



**Andrew Turner**  
Senior Partner

**T:** +27 031 940 0501  
**M:** +27 82 924 5888  
andrewturner@  
eversheds-sutherland.co.za