PROPERTY LAW

Transfer Of Property

The transfer of property is when the ownership of a property is moved from one person to another person. This happens when a property is sold or when the owner of the property dies and leaves the property to another person.

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For all your property transfer answers, follow our guide below:

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2. What is an agreement of sale?
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4. How does the transfer process work?
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1. What does the transfer of property mean?

- The transfer of property is when the ownership of a property is moved from one person to another person. This happens when a property is sold or when the owner of the property dies and leaves the property to another person.
- Ownership is a right that cannot be seen, but the evidence of ownership can be found in something called a deed of transfer (“deed”).
- This deed must be registered at the deeds office for it to be valid.

2. What is an agreement of sale?

- When a purchaser makes an offer to buy the property of the seller, and the seller accepts the offer of the purchaser, an agreement of sale comes into existence.

- An agreement of sale is a contract that contains the terms and conditions of the sale of the property and is negotiated between the purchaser and the seller, such as:
    - property description, for example, if it is a house it will be described as “Erf 500 in Tyger Valley situated in the City of Cape Town…”;
    - personal information about the purchaser and seller, for example, their names and identity numbers and so on;
    - purchase price and/or deposit, if payable;
    - details of the attorney instructed to transfer the property (“conveyancer”);
    - estate agent commission payable, if any;
    - any conditions the agreement of sale is subject to, for example, the purchaser obtaining a loan (“bond”).
- An agreement of sale will only be valid if it is in writing and signed by both the seller and the purchaser. An oral agreement of sale is not binding.
- The agreement of sale forms the basis for the transfer of property. Without a valid agreement of sale, and compliance with the terms and conditions contained therein, there can be no transfer of property.

3. How is the purchase price of the property payable?

- The payment of the purchase price may be made in cash or by obtaining a bond.
- The agreement of sale may provide for a deposit being payable by a certain date. However, the payment of a deposit is not a requirement in law, rather a gesture in good faith by the purchaser.
- When the purchaser is unable to pay the full purchase price, the purchaser can obtain a bond. The purchase price will then be secured by a bank guarantee.
- The purchase price or bank guarantee must be given to the conveyancer, pending the transfer of the property. On the request of the purchaser, this purchase price may be invested into an interest bearing bank account.
- Normally, the full purchase price may only be payable to the seller on registration at the deeds office.

4. How does the transfer process work?

The transfer process can take up to 3 months. There are different phases involved in the transfer of a property. These phases are:

- Instruction: a conveyancer receives the instruction to transfer the property.
- Communication: the conveyancer communicates with the various role-players involved in the transfer process, such as the seller, purchaser, transfer and bond attorneys, municipality, bank, South African Revenue Service (“SARS”) and so on.
- Collection: Certain information and documents are required, such as the agreement of sale, deeds office search, existing deed, bond cancellation figures from the bank and so on. The conveyancer should continuously report to the various role-players about the progress being made.
- Drafting and signing: As soon as all the information and documents have been collected, the conveyancer will draft the transfer documents and request the seller and purchaser to sign them. These transfer documents will include a power of attorney and various affidavits.
- Finances: Financial arrangements include requesting an advance payment for the conveyancer’s interim account for certain expenses, requesting the bank guarantee, collecting the purchase price or deposit and so on.
- Transfer duty: Obtaining a transfer duty receipt from SARS, confirming that the tax relating to the transfer of the property has been paid by the purchaser.
- Clearance certificate: Obtaining a clearance certificate from the municipality, confirming that all amounts in respect of property have been paid for the last two years.
- Prep: The conveyancer prepares for lodgement (submission) of the deed of transfer and other documents necessary for registration at the deeds office.
- Registration: Once the deed of transfer and other documents have been lodged it, the deeds office will investigate the documents. If the deeds office is satisfied that the requirement for the transfer of property has been met, the deed of property is registered. The conveyancer will notify the various role-players of the registration.
- Accounts: Once registered, the conveyancer makes the necessary calculations and payments relating to the sale, for example, the estate agent’s commission, purchase price and so on. The conveyancer’s final account is also drawn up and sent to the purchaser and the seller for payment.

5. What else should a person know about the transfer process?

- Normally there are 3 attorneys involved in the transfer process, being the transfer attorney, bond cancellation attorney and bond registration attorney.

- The transfer attorney is the conveyancer that has been instructed to attend to the transfer of the property and registration in the deeds office.
- The bond cancellation attorney is the attorney that cancels the existing bond of the seller over the property and ensures that the bank receives the outstanding bond amount when the purchase price is paid on registration.
- The bond registration attorney is the attorney that registers the purchaser's bond over the property. The purchaser is responsible for his/her bond payments.
- The costs relating to the transfer of property are:
    - transfer duty to SARS;
    - rates payable to the municipality;
    - conveyancer's interim and final account payable; and
    - fees to the relevant banks.
- The registered deed is given to the purchaser if the property was paid for in cash, alternatively the purchaser's bank if a bond was registered over the property.

6. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or to join visit our join now page.

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