PROPERTY LAW

Buying/Selling A Property

Learn about the legal process surrounding buying or selling a house in South Africa. A person ("buyer") must contact his/her bank to find out whether or not s/he qualifies for a home loan and if so, what amount s/he qualifies for.

Date updated: July 2022

For all your buying and selling property related questions, simply follow our guide below:

1. What must a person do before buying a property to call home?
2. What must a person do when s/he wants to sell his/her property?
3. What must a seller do if s/he feels that his/her estate agent has acted unprofessionally?
4. What terms and conditions must appear in a sale agreement?
5. How can LegalWise assist you?

1. What must a person do before buying a property to call home?

- A person ("buyer") must:
- contact his/her bank to find out whether or not s/he qualifies for a home loan and if so, what amount s/he qualifies for;
- make sure that s/he can afford the monthly loan repayments and other costs like, rates and taxes, water and electricity, insurance premiums and so on;
- find out about any once off costs, for example, legal costs, transfer duty or value added tax, loan administration, initiation and registration fees and so on;
- consider his/her future needs, for example, whether the property that s/he intends to buy is close to his/her work, shops, schools, hospitals and so on;
- examine the property s/he intends to buy thoroughly for any defects or potential defects, for example, cracks in the walls, damage to the roof, faulty plumbing and so on. The defects may be

taken into consideration when negotiating the purchase price of the property; and

- ask the person selling the property (“seller”) to provide him/her with the following documents: copies of the title deed and diagram; any existing lease agreements; approved building plans; and any other relevant information (such as zoning, town planning or municipality requirements). These documents must also be taken into consideration when negotiating the purchase price of the property.
- After examining the property and perusing the documentation, the buyer must decide whether or not s/he is interested in buying the property. If the buyer is interested in buying the seller’s property, s/he can make an offer to the seller or his/her estate agent.
- When the terms and conditions of an offer to purchase are being negotiated, the buyer will be asked for the date that s/he intends to move into the property (occupation date). If no date is set, the seller has the right to remain in the property until the property has been registered (transferred) into the buyer’s name and the seller has received the purchase price.
- After the buyer and seller have reached an agreement on the terms and conditions of the sale, the offer to purchase must be reduced to writing (if not already done so) and signed by both the buyer and the seller in acceptance; a sale agreement comes into existence.
- Any change to the sale agreement must be done in writing and signed by both the buyer and the seller.

2. What must a person do when s/he wants to sell his/her property?

- A seller can sell his/her property privately or through an estate agent.
- A seller may appoint one or more registered estate agents to list his/her property. The estate agent must be registered by the Property Practitioners Regulatory Authority and hold a fidelity fund certificate.
- The estate agent and the seller will enter into an agreement called a mandate in terms of which the estate agent will be entitled to receive commission for selling the seller’s property. The estate agent must explain the terms and conditions of the mandate to the seller.
- When the seller’s property is on show, the property must be kept neat and clean so that it is attractive to potential buyers on the day of the showing.
- Estate agencies have their own standard sale agreements that can be used for the purpose of buying or selling a property.

- When a seller decides to sell his/her property privately, it is advisable that s/he approach a professional to draw up a sale agreement. The professional must have the necessary knowledge and skills to advise the seller and draft a sale agreement best suited for the particular sale.
- A seller must inform the buyer of all defects or potential defects relating to the property, even if s/he is selling the property *voetstoots*.
- Upon receipt of the buyer's written offer to purchase ("offer") the property, the seller must read through the offer carefully, cross-out anything that s/he does not agree with, cross-out any open spaces, and add anything that must form part of the offer. The seller must initial next to the places on the offer where s/he has crossed-out or added something and provide the offer back to the buyer for his/her consideration.
- If there was nothing to be crossed-out or added, the seller may accept or reject the buyer's offer.

3. What must a seller do if s/he feels that his/her estate agent has acted unprofessionally?

- Complaints against estate agents may be lodged with the Property Practitioner Authority. For example, when the estate agent listed the seller's property at a different price than agreed upon.
- The Property Practitioner Authority will conduct an investigation and may conduct a hearing. If found guilty, the estate agent may be fined, reprimanded, or his/her fidelity fund certificate may be withdrawn. An estate agent without a fidelity fund certificate is not entitled to payment of commission. The contact details of the Property Practitioner Authority are:
- Telephone number: 087 285 3222
- Email address: eab@theppra.org.za
- Website address: https://theppra.org.za
- Online complaints: https://theppra.org.za/complaint

4. What terms and conditions must appear in a sale agreement?

- The terms and conditions that the seller and the buyer MUST agree on are:
- Identity of the seller and the buyer: by including their names, identity numbers, addresses, marital statuses and so on.
- Description of the property being sold by the seller: by including the deeds office's description, size, and/or street address of the property being sold.

- Purchase price of the property payable by the buyer: by including how the purchase price is going to be paid for by the buyer, for example, in cash or by obtaining a loan, and whether or not a deposit is payable. If a deposit is payable, the deposit must be held in an interest-bearing trust account by the conveyancer (the attorney instructed to transfer the property). If the purchase price is R250 000 or less, a cooling-off period of five working days will apply.
- The terms and conditions that the seller and the buyer MAY also agree on are, for example:
- Fixtures and fittings: anything else included in the sale of the property must be specified, for example, a tool-shed, curtains, remotes and so on.
- Conveyancer: details of the conveyancer handling the transfer. Usually the seller decides on a conveyancer, however, the seller and the buyer may also agree on a conveyancer.
- Costs: person responsible for certain costs relating to the transfer of the property, for example, obtaining a clearance certificate, transfer duty or value added tax and so on. The buyer and the seller are usually responsible for their own costs relating to obtaining, or cancelling of, a loan for the property.
- Occupation: the date of occupation by the buyer (on registration or a specified date before or after registration of the property into the buyer's name) and the amount of occupational rent payable by the seller or the buyer, if any.
- *Voetstoots*: when a property is sold "as is" (current condition). The defects or possible defects must be disclosed to the buyer to avoid liability for damages.
- Estate agent: name of the estate agent and the amount of commission payable, if any. The commission is negotiable between the seller and the estate agent.
- Certificates: the seller must provide, at his/her costs, an electrical compliance certificate, electrical fence certificate, pest control certificate and/or a gas compliance certificate.
- Suspensive conditions: for example, whether the sale is subject to the buyer obtaining a loan within an agreed period of time. The sale cannot proceed until all the suspensive conditions have been met.
- Breach: what will happen if the seller or the buyer does not comply with the sale agreement, for example, if the buyer breaches the agreement of sale, the seller will notify the buyer to fix the breach within seven days. If the buyer does not fix the breach, the seller will be entitled to proceed with a claim for performance in court or cancel the sale agreement and proceed with a claim for damages in court.

5. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, 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 visit our join now page.

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