Conveyancing attorneys - their role in a property transaction

By Adrian Goslett

18 Apr 2017

The change of ownership of an immovable doesn't happen when the Offer to Purchase is signed, or even when the purchase price is paid to the seller. Rather, for ownership to change hands, the property needs to go through a registration process at the deeds office, where the home is transferred into the new owner's name - this process requires the services of conveyancing attorneys.

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Each time a property is sold it will go through the conveyancing process and a new title deed will be issued in the name of the new owner. Part of the process is also to remove the property from the seller's name. The title deed ensures the certainty of the owner's title to the property that he or she has purchased.

Conveyancing process

Three attorneys are used in the conveyancing process; the registering attorney, the cancellation attorney and the transferring attorney. The transferring attorney is appointed by and will represent the seller. As the seller, there are some things that can be expected of a transferring attorney during the process. First off, the attorney should always protect the interest of their client, being the seller. Except for the course issues of the law, the client's interests should be a priority. Another thing that the attorney should do is keep the seller updated with the progress of the transaction. The attorney needs to communicate with the seller on an ongoing basis and keep them informed about the conveyancing procedure.

The conveyancer must advise the seller on the content of the Offer to Purchase, especially if the contract contains certain suspensive conditions, such as the offer being subject to the buyer's bond approval or selling another property. With regard to the Offer to Purchase, the attorney must also keep the seller informed of their obligations to ensure that the transfer of the property is not delayed. The attorney will meet with the seller to go over all documentation and explain anything that the seller does not fully understand. Once the seller has been informed of everything and all has been clarified, the seller will then sign the necessary documentation to conclude the transaction. Once all the document is ready, the attorney will lodge them with the Deeds Office.

Penalties or administrative charges

The attorney will be in contact with the seller's bank so will inform them once their bond has been settled and cancelled. The attorney will also be able to tell the seller whether there are any penalties or administrative charges that need to be paid, which would impact the eventual settlement balance. Certain notice periods may need to run their course before the money is paid over to the seller. Before any guarantees are issued in respect of the transaction, the attorney must obtain the seller's instruction.

To ensure that the process runs as smoothly and as quickly as possible, the conveyancing attorney will do everything in their power to expedite the registration of the property. Ideally, they will aim to close the transaction on the date that was agreed upon in the Offer to Purchase, provided there are no unexpected delays. Bearing in mind, they are heavily dependent on several external parties such as banks, city councils and the such - this is no mean feat.

On the day that the property has been registered in the new owner's name, the attorney will inform the seller. Once everything has been concluded, and the home has been successfully registered, the attorney will account to the seller for any fees that relate to the transaction. Sellers can expect to receive this account within two days of the property's date of registration.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.

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