

# Unpacking the property transfer process

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Transferring the ownership of a property from the seller to the buyer can sometimes be a complicated and misunderstood process. It involves a number of parties, many of who have conflicting interests.



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Regardless of each party's interest in the process, all have to work together and coordinate their efforts to ensure that the documentation arrives at the Deeds Office simultaneously. Certain parties such as the real estate agent, mortgage lender and bond originator, who have a financial interest in the transaction, often want the process to be concluded in the shortest possible time frame, much like the buyer and sellers themselves.

Understanding the sequence of events during the transfer procedure will assist buyers and sellers to accurately monitor the process and provide them with an idea of the time remaining at each stage. On average, the process can take around three months, starting from the date of sale and ending with the property being registered in the new owner's name. That said there are a few external factors that could postpone the process. These could include obtaining clearance certificates or the fulfilment of a stipulated condition in the contract.

Here are some of the typical steps required to transfer a residential property:

## Step 1

The buyer signs an offer to purchase (OTP). The sale agreement or deed of sale is a binding contract between the buyer and the seller that forms the basis of the transaction.

## Step 2

The buyer or bond originator applies to the bank for finance. A bond application will normally form part of the suspensive conditions, which are events that need to happen before the sale is finalised. Another common suspensive condition is the sale of the buyer's existing home.

## Step 3

The estate agent will send the sale agreement to the transferring attorney – one of three attorneys that will be appointed during the process. If there is an existing bond over the property, the transferring attorney will then contact the seller's bank and request the original title deed and cancellation figures, also referred to as discharge costs - this is the figure required to settle the seller's bond.

## **Step 4**

The buyer's bank will then instruct a bond attorney to register a mortgage bond, which is a special loan which uses fixed property as security and is registered in the Deeds Office.

## **Step 5**

The seller's bank instructs their attorney, the cancellation attorney, to cancel the seller's bond. The cancellation attorney then sends the title deed and guarantee requirements to the bond attorney and the transferring attorney.

## **Step 6**

The transferring attorney requested a rates clearance certificate from the local authority.

According to South African law, a property can only be transferred once all municipal charges and associated costs have been paid in full to the relevant parties. Once this is done, a rates clearance certificate will be issued by the local council. The seller may be required to pay a few months in advance to obtain the certificate, however any credit on the account at the date of transfer will be refunded. At this stage the transferring attorney will also do a Deeds Office search to check all the details of the property.

After this is complete the transferring attorney will assemble and prepare the required documentation, which can take up to three weeks to prepare.

## **Step 7**

At this stage the buyer will be contacted by the transferring attorney to come in and sign the documents. The buyer will be required to sign a Power of Attorney to Transfer, as well as a number of affidavits to verify their marital status, financial status and identity. Buyers can prepare for this by getting the following documentation in order:

- A proof of address (not older than three months)
- A certified copy of their identity document
- Their income tax number.
- Declaration in respect of marital and solvency status
- Particulars concerning the identity of the attorney transferring the purchaser's property if the buyer is utilising the proceeds to pay for his purchase

- Particulars of the bond granted

These documents will be needed to meet the Financial Intelligence Centre Act (FICA) requirements. Apart from FICA, the transfer process is required to satisfy the necessary criteria of several regulatory institutions such as the Transfer Duty Act and the Value Added Tax Act for the South African Revenue Service (SARS) and the Municipal Property Rates Act.

## Step 8

The buyer pays the transfer costs and their share of the rates and taxes. A proforma account will be presented to the buyer with estimated costs. The buyer will receive a final account after the property has been registered and the actual costs are known. The costs vary because the date of registration is unknown at this stage of the process and a portion of the costs are determined by this date.

## Step 9

The transferring attorney instructs the lodging attorney to lodge the documents with the Deeds Office. The lodging attorney is located near to the Deeds Office and acts on behalf of the transferring attorney, who may not be in the vicinity. The lodging attorney will contact both the cancelling attorney and bond attorney to ensure that all the documents are lodged on the same day. The documents must be registered at the same time because the seller's bank has guarantees to ensure it will be paid when the bond is cancelled, and they are not prepared to cancel the bond until the new bond is registered.

## Step 10

A Deeds Office examiner will carefully check over all the documentation. This will take between seven and ten working days depending on how busy the Deeds Office is. Once the documents have been examined, the examiner will contact all the attorneys to inform them that they are in order and will be registered the following day.

## Step 11

The documents are registered – the buyer becomes the owner of the property and the seller is paid out the net proceeds. At this stage the estate agent will also be paid their commission. At this stage the transferring attorney will send the original title deed to the buyer's bank. In the instance where the buyer does not have a bond, the title deed will be sent directly to the buyer.

While it can be a complex process, a professional real estate agent will be able to provide guidance to both buyers and sellers. Understanding the transfer sequence and having all the necessary documentation at hand before the start of the process will ensure that everything progresses without incident.

## 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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