buying or selling?

Buying or selling property will probably be the single biggest financial decision of your life. Here are a few pointers on what you need to know when buying or selling property in South Africa.

Adams & Adams has an experienced Real Estate team who specialises in all property-related matters. Our team has the know-how to guide you through every step of the process. Here are our best tips to ensure a smooth transaction, from start to finish.

signing the offer to purchase

The offer to purchase (also known as an agreement of sale) should be in writing and signed by the seller and the purchaser to be a legally binding agreement. A verbal agreement will be invalid. An agreement for the sale of immovable property must further be signed in wet ink; electronic signatures are not legally recognised.

All the terms which are agreed upon should be contained in the offer to purchase. There are numerous terms which can, and should ideally, be included in the agreement of sale in order to ensure a valid, and smooth transaction. These are, for example:

- The description of the buyer and the seller;
- The description of the property;
- The purchase price;
- Suspensive conditions relating to the sale of the purchaser's existing property (if any) and/or whether the purchaser requires bond approval in order to finance the purchase of the property;
- The amount of agent's commission payable by the seller and whether there are circumstances under which the purchaser can be held liable for payment.

Amendments to the signed offer to purchase can only be made with mutual agreement between the parties and should be in writing.

Hint: Contact one of our professionals for legal advice before signing any offer to purchase. We will guide you through the fine print to identify potential (and often common) pitfalls.

bond approval

The offer to purchase will stipulate how the purchase price should be paid.

The purchaser should ensure that the time periods agreed upon in the offer to purchase are adhered to. This includes securing the bond approval timeously.

Securing bond approval is usually a suspensive condition of the offer to purchase, which means that the offer to purchase is suspended until such time that the bond has been approved, failing which the offer to purchase lapses.

Hint: One of our professionals can put you in touch with a bond originator or a consultant at the bank of your choice to assist with the application for bond finance.

costs

The purchaser is responsible for payment of transfer costs and bond registration costs (if the property is financed by a bank).

Transfer costs include transfer duty (a tax payable to SARS, if applicable), attorney fees and other disbursements.

The seller is responsible for the payment of rates clearance figures to the municipality, the estate agent's commission (if applicable), and the costs to cancel the existing bond.

Hint: Use the Bond and Transfer Cost Calculator on our website to get an indication of the applicable costs. Alternatively, contact one of our professionals who will gladly provide a formal quotation.

Hint: Read this article for further guidance on the costs to budget for when purchasing a property.

instructing a conveyancing attorney

Transferring attorneys are the attorneys attending to the transfer of the property from the seller to the purchaser and the bond attorneys are the attorneys attending to the registration of the bond by the purchaser in favour of the bank who granted the loan.

It is customary that the seller appoints the transferring attorney. However, the purchaser can negotiate with the seller to appoint his/her attorney of choice.

Although the bank instructs the bond attorneys, the client (purchaser) can request the bank to appoint his/her attorney of choice, which appointment may be allowed at the bank's discretion and only if the attorneys are on the bank's panel of approved attorneys.

Hint: Read this article for further information on the role that the conveyancing attorney plays in the bond and transfer registration process.

Hint: Adams & Adams is on the bond attorney panels of all major banks.

cancellation of existing bond

The seller's existing bond will have to be cancelled simultaneously with the transfer of the property in the name of the purchaser.

Banks usually require a 90-day notice period prior to the cancellation of the existing bond. Notice should be given as soon as possible to avoid penalties – even prior to putting your property on the market.

No withdrawals of excess funds are allowed from the existing bond account once notice has been given to the bank. Payment of the monthly bond instalment must still be made into the bond account up until the day of registration at the Deeds Office.

Hint: Contact one of our professionals to assist you to give notice of your intention to cancel your existing bond to the bank.

lodgement and registration at the deeds office

The documents for the cancellation of the existing bond, the transfer of the property, and the registration of the purchaser's new bond must be lodged and registered simultaneously at the relevant Deeds Office.

The examination process at the Deeds Office takes between 7 and 10 working days, where after registration will be effected.

conveyancing process

The conveyancing process takes between 2 and 3 months.

The process includes the gathering of FICA documents from all parties, the preparing of transfer and bond documents, the signing thereof, the obtaining of rates clearance figures and the rates clearance certificate and electrical compliance certificate/s, and all the financial arrangements relating to the transaction.

Hint: Contact one of our professionals with questions you may have regarding the conveyancing process.

further questions?

Please do not hesitate to contact our qualified and experienced professionals for any queries you may have.



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