



Prokureurs, Notarisse en Aktevervaardigers

Attorneys, Notaries and Conveyancers

Reg. No. 1999/022245/21

CELEBRATING 30 YEARS OF EXCELLENCE

ALWAYS REACHING FOR THE NEXT LEVEL IN SERVICE - LEVEL 2 BEE-CONTRIBUTOR

NECESSITY OF UPDATED AND APPROVED BUILDING PLANS:

MEMORANDUM TO CLIENTS:

Dear Valued Client,

We attach hereto our summary of Conveyancing events but wish to elaborate on an aspect which causes huge delays during the process of Transfer of Ownership from a willing SELLER to a willing BUYER.

The industry has become more alert regarding the statutory requirements by Council and specifically the requirement to have updated and approved building plans of all structures on an Immovable Property. It has always been a requirement that any extensions to buildings, alternatively additional structures erected (including alterations, conversions, extensions, rebuilding, re-erection, repair, or subdivision of or addition to any building) on a Property, be legalised by way of architectural designs, which designs need to be approved by the Local Authority holding jurisdiction over the Property. It is further necessary, as Occupation Certificates in respect of properties are issued on such approved building plans. In this regard, please refer to the following namely:

1. Section 4(1) of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) directs that no person / owner shall, without the prior approval in writing of the local authority in question, erect any building in respect of which **Plans and Specifications** are to be drawn and submitted in terms the Act.
2. Section 14(4) of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977) directs that any owner granting occupation or use of a building without an **Occupation Certificate** shall be guilty of an offence.
3. For further reference, you may refer to Regulation A25 of the National Building Regulations Promulgated in terms of the National Building Regulations and Building Standards Act (referred to above).

Visit www.eyslaw.co.za for the disclaimer applicable to this letter.

Direkteure / Directors:

Elmo-York Stuart – BLC, LLB
Jo-Hanna Nell – BLC, LLB (Aktevervaardiger / Conveyancer)
Bianca van Wyk – LLB, LLM (Mercantile Law)

Bygestaan deur / Assisted by:

Hannelie Hattingh – BPolSci, LLB (Aktevervaardiger / Conveyancer)
Leslie A. Stuart – BComLaw, LLB
Quintin Frederik Badenhorst – LLB
Mienke Stuart – LLB
Ziegh Steenkamp – LLB, CFP
Alexander Persaud - Van der Westhuizen – BA (Law), LLB

Tel: (012) 346 2302

Faks / Fax: (012) 346 1849

Faks Aktes / Fax Conveyancing: (012) 346 5564

E-Pos / E-Mail: #####

Webwerf / Website: www.eyslaw.co.za

Suite 202 Waterkloof Gardens Office Park
Mainstraat 270 Main Street
Brooklyn 0181
Posbus / PO Box 6492 Pretoria 0001
Docex 111 Pretoria

It is not our duty, as Conveyancers, to check whether there are duly updated building plans, and occupation certificates in respect of properties we deal with during the process of transfer, but, however, we believe that this is an important aspect, which every Purchaser should be advised of.

- A. We also recently noted that the **Banks / Financial Institutions as well as Estate Agents and Purchasers**, are specifically writing clauses into *agreements*, as well as *bond approvals*, relating to transfer of ownership and registration of bonds being *subject to the registration of updated and approved building plans, and issuing of occupation certificates.*

As the process takes time, transfer of Ownership is very often delayed, and some transactions are even cancelled due to the delay.

- B. Further to this, the **Mpumalanga** Deeds Office (Nelspruit) ruled that, according to their interpretation of the Spatial and Land Use Management Act, 2013 (Act 16 of 2013) ("SPLUMA"), no property may be transferred in the Province, without a **SPLUMA Certificate**. In layman's terms, the Certificate issued, certifies to the Deeds Office that the Property so transferred complies with all Municipal By-Laws, and is used for the purpose it is zoned for.

As the application circulates through all Departments, no SPLUMA Certificate will be issued should there be any problem whatsoever with the Property's Building Plans and/or Occupation Certificate.

- C. We would advise every **Landowner / Seller** to avail himself/herself/themselves/itself of the condition of the building on the Property he/she/they/it owns, and to ensure that all building plans are updated, and approved by official stamp of the Local Authority holding jurisdiction over the Property.
- D. **Sectional Title Owners** have a further hurdle to cross, as, in terms of the *Sectional Titles Act, 1986 (Act 95 of 1986)*, no Unit may be extended without a *special resolution* by all the Members of the Body Corporate. Therefor, over and above the necessity for extended building plans, they will need such *special resolution*, as well as appoint a Surveyor to assist with the preparation of *Sectional Title plans of extension* of a Section, which Sectional Title Plans must also further be *registered in the Deeds Office*.

We wish to invite you to contact our offices for advice and any further queries. We can also direct you to our *panel of specialists* who can assist you to attend to the necessary.

Yours faithfully,



EY STUART INC.
Per: ONA NELL

SUMMARY OF EVENTS IN A CONVEYANCING MATTER

The processes, in short, as follows :

1. ***The Sale Agreement :***

Upon receipt of our instructions, we will peruse the Sale Agreement to determine the terms and conditions thereof. We will enforce the Agreement, all payments in lieu thereof, etc., to the best of our ability, with the assistance of your Estate Agent. Should we be concerned about any of the terms and conditions, we will communicate with all parties and clarify any uncertainties. We will also proceed to diarize all dates (e.g., date for payment of Deposit, Guarantee delivery date, occupation date, etc.).

2. ***What are suspensive conditions?***

The Sale Agreement may contain certain suspensive conditions (e.g., obtaining of a Mortgage Bond by the Purchaser, or sale of the Purchaser's property). These are conditions that must be fulfilled before the Transfer process can proceed. Should any of the suspensive conditions not be complied with within the time frame that is stipulated for same in the Agreement, then the Agreement shall lapse and be of no further force or effect (in other words, it will fall away as if it never came into being in the first place). All parties must take note that all reasonable steps must be taken for suspensive conditions to be fulfilled, failing which, the other party might have a claim for damages against yourself.

3. ***FICA documentation :***

In terms of the Financial Intelligence Centre Act, ourselves, as Attorneys, have the responsibility to ensure that the Act is duly complied with. As a result, we will require certain "FICA documents" from yourself and attach hereto a summary, for ease of reference. Initially, we will require faxed or e-mailed copies of the documents, but will require the ***originals*** upon signature, to enable our Conveyancer to certify same as true copies of the originals.

4. ***Deposits :***

The Sale Agreement will determine whether a Deposit is payable and within which period such Deposit must be deposited into our Trust Account. Deposits **MUST** be paid, irrespective of whether your Bond has been approved or not.

In the event where a Bond is approved, but not for the full amount, and where the Purchaser agrees that the lower Bond will be accepted, a further Deposit will be payable by the Purchaser, in terms of an Addendum drawn by ourselves, and on Guarantee delivery date (discussed below).

5. ***Cancellation of existing Bonds :***

All existing Bonds, registered by the Seller over the Property, need to be cancelled, simultaneously with Transfer. We will request Bond Cancellation Figures from the Bankers of the Seller, who will then instruct their Bond Cancellation Attorneys to attend to the cancellation. The original Title Deed and Bond Deed will be forwarded to the Bond Cancellation Attorneys, for lodgment at the Deeds Office. Once we receive a copy of the Title Deed, we should be in a position to draft the Transfer documentation (subject to the receipt of FICA documents by all parties).

6. ***Registration of a new Mortgage Bond :***

The Sale Agreement will, once again, determine whether the Purchaser needs to obtain a Bond for the full, or a balance (after deduction of the Deposit), Purchase Price. A time period will also be granted for the Bond Approval (see suspensive conditions above). From date of signature of the Sale Agreement, the Purchaser will need to co-operate with their Bankers/Bond Originators, to supply them with all the necessary information and

documentation, to *take all reasonable steps* for a Mortgage Bond to be approved for them, over the Property. Once the Purchaser's Bond has been approved, the Sale Agreement is normally unconditional, and the transaction can proceed on an urgent basis. The Purchaser's Bank will appoint Bond registration Attorneys, who will deal with the Bond registration on their behalf. At this point, we will print out our Transfer documentation (already drafted) and arrange for signature.

7. **Rates Clearance Certificate :**

No Transfer of ownership of land can be effected without a Rates Clearance Certificate by the Local Authority, and certifying that all Municipal Rates and Taxes of the Seller has been paid to date. Upon Bond Approval (or fulfilment of other suspensive conditions, if any remains), our Offices will proceed to instruct our Agent to obtain Rates Clearance Figures from the Local Municipality. The Rates Clearance Figures are the responsibility of the *Seller*, and payment will be requested from the Seller once we receive the figures. We can obtain our Rates Clearance *Certificate*, for lodgment at the Deeds Office, within approximately 3 (three) business days from date of payment, as such.

8. **Levy Figures :**

If the Property is a Sectional Title Unit, alternatively a full Title property located within a Security Estate (Home Owners Association), then, and in that event, we will apply for Levy Figures (similarly to Rates Clearance Figures) from the *Body Corporate/Home Owners Association/Managing Agent*. It is very important that we be advised if any Home Owners Association is applicable over the Property, to enable us to attend to same timeously. Similarly to Rates Clearance Figures, payment is the responsibility of the *Seller*. Payment will be requested from the Seller and forwarded to the Body Corporate/Home Owners Association, for the issuing of a Levy Certificate, for lodgment at the Deeds Office.

9. **Guarantees :**

The Sale Agreement will determine by when Guarantees need to be delivered. Guarantees are delivered by *the Bond Attorneys*, should the Purchaser make use of a Mortgage Bond (see 6 above). If a transaction is deemed as a cash transaction, Guarantees will be requested from the Purchaser's Banker. Two (2) Guarantees will, under normal circumstances, be requested, namely :

- (i) in favour of the Seller's Banker for cancellation of the existing Mortgage Bond; and
- (ii) in favour of our Company (Trust Account), for distribution on date of registration of ownership into the name of the Purchaser.

Once Guarantees are received by ourselves, the first Guarantee, referred to above, is forwarded to the *Bond Cancellation Attorneys*, to enable them to attend to signature of the Consent to Bond Cancellation by the existing Bondholder.

10. **Signature of documentation :**

Our Conveyancer will contact yourselves for signature of the Transfer documents, at our Offices, once all suspensive conditions have been met, and once all information necessary has been obtained.

11. **Transfer Duty/VAT and Transfer Costs:**

Either *Transfer Duty* or *VAT* will be payable on a Sale Agreement. In most instances, the *Purchaser* will be liable for Transfer Duty, and the amount of Transfer Duties will reflect in our Pro Forma Statement of Account, forwarded to you in due course. Transfer Duties need to be paid simultaneously with, or very soon after, signature of the documents, to enable us to lodge our Transfer Duty Declarations, via E-filing, with SARS. Transfer Duties are then paid, and the Transfer Duty Receipt forwarded to us via E-filing by SARS. The Transfer Duty Receipt is also lodged with our documents at the Deeds Office.

Similarly, to the above, our *Transfer Costs* will reflect from our *Pro-Forma Statement of Account*, delivered to you upon signature of the Transfer Documents, and payable prior to lodgment in the Deeds Office. All such costs and expenses are payable by *the Purchaser*.

12. **Electrical Certificate :**

All Properties sold must be accompanied by an Electrical Compliance Certificate, as anticipated in the Sale Agreement. The Electrical Compliance Certificate is the responsibility of *the Seller*, who will need to appoint a certified Electrician, to inspect the electrical installation in and to the Property.

If the Property is fenced by an Electrical Fence, an Electrical Fence Certificate will also be needed and to be supplied by the Seller.

If the Property has a Gas Installation, a *Gas Certificate* will also be needed and to be supplied by the Seller.

We will call for the abovementioned applicable Certificates prior to lodgment at the Deeds Office.

13. **Lodgment :**

As soon as all steps (above) have been completed and we are in possession of our:

- Guarantees;
- Transfer Duty Receipt;
- Rates Clearance Certificate; and
- Levy Clearance Certificate.

we should then be in a position to lodge our documents at the Deeds Office, for registration. We are, however, reliant upon the Bond Attorneys and Bond Cancellation Attorneys, who need to lodge their Consent to Bond Cancellation and Bond registration documentation simultaneously with our Transfer. The transactions are linked in a “batch”, consisting of Transfer, Bond Cancellation and Bond registration.

14. **Preparation (“prep”) :**

After lodgment at the Deeds Office, the documents are examined by 3 (three) levels (Junior Examiner, Senior Examiner and Assistant Registrar). Once the Deeds have been examined by all three (3) levels, and passed, to that point, it will be placed on “prep” with notes to the Conveyancer. These notes are known as preparation notes and need to be complied with prior to registration. Five (5) working days are given to the Conveyancer to deal with the necessary. Under normal circumstances, the documents will proceed to registration on the next business day.

15. **Registration :**

After preparation, the documents will proceed to registration department in the Deeds Office. The Conveyancer will attend to execute the Deeds before the Registrar and Assistant Registrars of Deeds, whereafter the documents will be signed by the Registrar/Assistant Registrars and be forwarded to Numbering, Data, Micro and Delivery to the Conveyancer. These processes, after registration, take approximately 4 (four) months.

16. **Finances :**

Upon registration, the Conveyancers will notify their clients, the Financial Institutions, and the Agents of registration. Guarantees should be paid into the Trust Account of the Conveyancer during the evening after registration and finances can normally be finalised on the first business day after registration. We will draw final Statements of Account, reflecting all income received and all expenses paid, fees, VAT, etc., which will be forwarded to yourselves within 3 (three) business days after registration.

17. **Delivery :**
Delivery of the original Deed of Transfer will be effected to the Conveyancers within approximately 4 (four) months from registration. Upon receipt, the original Title Deed will be forwarded to the Bond registration Attorneys, to be held as security, by the Purchaser's Bankers. If no Bond was registered, we will contact the Purchaser for delivery, directly to the Purchaser.
18. **Refunds by Local Municipality :**
We can supply the Seller with contact details of our Agent, to assist him/her/it with the necessary journals and claim for refund. The Parties may also elect to attend to this themselves.
19. **Name Change at Local Municipality :**
The Agent can also assist the Purchaser with the name change on the account. The Parties may also elect to attend to this themselves.

Please note that the Parties should also co-operate with each other for the closure, and re-opening of all consumption accounts (this is done on date of Occupation of the Property by the Purchaser).

20. **Refund by Body Corporate/Home Owners Association :**
The Seller will deal directly with the Body Corporate/Home Owners Association for any refunds due to them.
- *Upon registration, the Seller shall receive a pro rata refund on Levies, and pertaining to the month in which registration takes place.*

We trust that the above will give you a better understanding of the Transfer processes, and that this will assist you going forward. We also trust that you will be satisfied with our Company's services and we invite you to contact our Conveyancer directly, should you have any queries or problems.