

Property in South Africa: Fees Taxes and other essentials

"The minute you read something that you can't understand, you can almost be sure that it was drawn up by a lawyer"
Will Rogers

Presented by Danie Botha of
Wilsenach Van Wyk Attorneys –
Johannesburg

Phone Number: 0836040174

Email: danie@wvw.co.za

The Origin of Legal Fees

- In ancient Rome, Emperor Claudius legalized the legal profession and even allowed lawyers (also known as advocates) to charge fees. During the ages this profession and the fees its members charge have become more and more complicated to the point where today the public in need of a lawyer, rather than argue, in most cases just accept the bill and get on with it.
- Although every person that delivers a service or performs work is entitled to remuneration the question remains why are legal fees - and for the scope of this presentation – property conveyancing costs so confusing to the public at large.
- In this presentation I will attempt to clarify the costs involved in property transactions as well as provide the prospective property client with the tools needed to make sure he or she is not being treated unfairly when engaging in a property transaction.

Lets start the journey: In South Africa the legal profession used to be regulated by the Law Societies of the various provinces. With the introduction of the new Legal Practice Act 28 of 2014, that came into full effect on 1 November 2018, the old Attorneys Act 53 of 1979 was repealed in its entirety. The result is that the Law Societies were replaced by The Legal Practice Council (LPC), which is the national, statutory body established in terms of Section 4 of the Act and together with its Provincial Councils it regulates the affairs and exercise jurisdiction over all legal practitioners. Note that the Law Society of South Africa (LSSA) still exist but in a capacity that represents its members. The regulatory authority is now the LPC.

One of the functions of the LSSA is to prescribe the conveyancing tariffs. This is the term used to describe the fee an attorney may charge for transferring a property from one party to another, registering a mortgage bond on behalf of a bank for a client of the bank, or for property related work that may be required by a client, an example will be the registration of a sub-division, the endorsement of a Title Deed after a divorce or death etc.

In addition to these fees property transactions are subject to tax and depending on certain factors either transfer duty (NOT TO BE CONFUSED WITH THE TERM TRANSFER COSTS) or Vat may be applicable. The Deeds Office, a government division that falls under the Department of Rural Development and Land Reform also charge the public a “per transaction” fee as a way to subsidize its expenses. This is over and above the allocation they get from the National Budget.

It does not stop there however. Attorneys (or Conveyancers as specialist attorneys dealing with property are called) charge various extra fees in addition to those fees prescribed by the LSSA. The Banks (if you need to finance your property) also charge a once off fee of Rupfront that is in addition to the interest and normal monthly banking fees applicable to a home loan. With commercial loans even more so.

Lastly the various City Councils (and in the case of Sectional Title property the Managing Agents) charge admin fees for providing the relevant clearance figures and certificates they are required to issue as proof that every property sold has no historical debt outstanding.

If you are not confused at this point you are either a Conveyancer or you deal with property a lot. In the next few slides I will break down the costs item for item, with an explanation of how its calculated and when it is applicable. Hopefully at the end of this presentation you will be knowledgeable and you will have a clear understanding of property related fees and taxes.

I will also aim to give you insight into the various methods Local Authorities and Body Corporates employ to calculate and determine the amount required before it will issue a clearance certificate as referred to above.

Who pays the fees?

It is a historical practice in our law that the Seller appoints the Conveyancer. This is not law or cast in stone and it is within the rights of the parties to negotiate who will appoint the Conveyancer. Always remember that even though a Conveyancer has a duty of care to look after all interested parties in a property transaction in the end he or she can only represent the party that made the appointment should a dispute arise.

Except in new developments, where in some instances all the costs are included in the sale price, the Purchaser pays the costs of transfer. In fact if you finance your property purchase through a commercial bank they will not allow the transaction to proceed if they become aware that an agreement is in place for the Seller to pay the transfer costs. The reason for this is that they view the price of the property to be inflated and see this as a risk under their loan to value criteria.

Remember that if you need a home loan your bank will instruct a Conveyancer on their panel of attorneys at your cost to complete the mortgage bond on their behalf.

In most property transaction there are always some fees payable by the Seller. We will look at these later in the presentation.

We will now look at the fees payable by the Purchaser of property. Keep the exception of a new development as explained above in mind though.

Transfer Duty “Hereregte”

Transfer duty or “Hereregte” as it is known in Afrikaans is a tax levied on the sale of a property by the National Government. It is payable upfront to SARS and the Conveyancer takes care of the payment and collection thereof. On the account you receive from the Conveyancer this is the line item called “Transfer Duty”. It is reviewed every year in the national budget and this year it was altered to provide relief for purchasers of lower value properties whilst collecting more from higher value property transactions. The current transfer duty sliding scales are as follows:

Where the sale price is less than R1 000 000.00 – Zero transfer duty is payable;

Where the value is between R1 000 001.00 – R1 375 000.00 – 3% of the value above R1 000 000;

Where the value is between R1 375 001.00 -R1 925 000.00 – R11 250.00 + 6% of the value above R1 375 000.00;

Where the value is between R1 925 001.00 – R2 475 000.00 – R44 250.00 + 8% of the value above R1 925 000.00;

Where the value is between R2 475 001.00 – R11 000 000.00 – R88 250.00 + 11% of the value above R2 475 000.00;

Where the value is R11 000 000.00 and above – R1 026 000.00 + 13% of the value exceeding R11 000 000.00;

VALUE ADDED TAX: VAT

Vat is levied at either 15% or Zero percent. NOTE that a property transaction is either subject to Vat or Transfer Duty, NEVER both. When will transfer duty be applicable?

- Transfer Duty is applicable when the SELLER is not a Vat vendor or IF the Seller is a Vat vendor and the property in question is sold outside of its normal business and not in its capacity as a trader. Think for example of a company that is Vat registered and owns a holiday property at the coast where the staff go from time to time. They are now selling this property and although the Seller is registered for vat the property sale is unrelated to its business.
- From the above you will see that most private sales between individuals are subject to Transfer Duty and not Vat. Vat finds application when you buy from a trader of property or a developer of new property and that trader or developer is Vat registered. Remember that if you buy from a Vat vendor such as a developer it is common practice that the price advertised will already include the Vat. You still pay the Vat but not over and above the advertised price as is the case with Transfer Duty. This is what makes buying in a new development where the developer is a Vat vendor so attractive.
- I referred to the Zero rating of Vat above. I will not go into this for purposes of this presentation but you are welcome to contact me if you require more information. Suffice to say it is only applicable in certain business transactions where property forms a part of the sale of the business.

Transfer and Bond Costs

- These are the main fees charged by Conveyancers and the fee guideline is published and increased from time to time by the LSSA. Please note that the fee guideline comes with the instructions to Conveyancers that “These fees are negotiable. These are only guidelines and not minimum or maximum fees”. Very few members of the public are aware that, as with most commodities or services a fee can be negotiated with a Conveyancer. Remember that most Conveyancers will be open to this, but as with any negotiations, only to the point where it makes business sense to them.
- Lets now look at the recommended tariffs. Note that they are based on the price of the property and the amount of the bond. In both instances they are the same. If you buy cash then you will only pay transfer costs and you will not need a bond attorney as referred to before.

Recommended tariffs:

Value of property or bond:

R100 000 or less

R100 001 up to and including R500 000

R500 001 up to and including R1 million

R1 000 001 up to and including R5 million

Over R5 000 001

Recommended Guideline of Fees

R5000

R5000 + R770 per R50 000 or part thereof above that
R11 160 for the first R500 000 plus R1540 per R100 000
or part thereof above that

R18 860 for the first R1 million plus R1540 per R200 000
or part thereof above that

R49 660 for the first R5 million plus R1925 per R500 000
or part thereof above that

Please remember that if more than one property is transferred in one new Title Deed or more than one property is dealt with under one bond then the suggested fees issued by the LSSA allow an additional 15% over and above the fees above for each additional property with a maximum of R3140 per additional property.

VERY IMPORTANT: Most Conveyancers are registered for vat and the above fees exclude Vat.

Deeds Office Fees

As mentioned earlier the Deeds Office (there are 10 throughout SA) raise fees for every transaction they perform on behalf of the public. Over the years it became customary for these fees to be adjusted every year April. Although they deliver various services the important ones for this discussion is the transferring of a property and the registration of a mortgage bond, as well as the supplying of electronic information through their internet service, commonly called a "Deed Search".

Because they charge per transaction the average Purchaser that buys with a bond will see charges for Deeds Office related fees as 4 items on his/her bill from the transferring and bond attorney (2 per attorney). This is because the Deeds Office charge separately for transfers and bonds even though it is for the same property and the attorneys doing the transfer and bond registrations will also both charge for a Deed Search. This search is done at the start of a new transfer or bond instruction and is used to verify property, party and other details relevant to the process. In our firm we charge R150 plus vat for this.

Lets now look at the Deeds Office fees. It is again based on the value of the property or the amount of the bond:

(a) A transfer of which the purchase price/value of the property whichever is the greater:

(i) Does not exceed R100 000	R39
(ii) Exceeds R100 000 but not R200 000	R86
(iii) Exceeds R200 000 but not R300 000	R539
(iv) Exceeds R300 000 but not R600 000	R673
(v) Exceeds R600 000 but not R800 000	R946
(vi) Exceeds R800 000 but not R1 000 000	R1086
(vii) Exceeds R1 000 000 but not R2 000 000	R1 220
(viii) Exceeds R2 000 000 but not R4 000 000	R1 691
(ix) Exceeds R4 000 000 but not R6 000 000	R2 051
(x) Exceeds R6 000 000 but not R8 000 000	R2 442
(xi) Exceeds R8 000 000 but not R10 000 000	R2 854
(xii) Exceeds R10 000 000 but not R15 000 000	R3 397
(xiii) Exceeds R15 000 000 but not R20 000 000	R4 080
(xiv) Exceeds R20 000 000	R5 435

(b) A bond of which the capital amount:	
(i) Does not exceed R150 000	R417
(ii) Exceeds R150 000 but not R300 000	R539
(iii) Exceeds R300 000 but not R600 000	R673
(iv) Exceeds R600 000 but not R800 000	R946
(v) Exceeds R800 000 but not R1 000 000	R1 086
(vi) Exceeds R1 000 000 but not R2 000 000	R1 220
(vii) Exceeds R2 000 000 but not R4 000 000	R1 691
(viii) Exceeds R4 000 000 but not R6 000 000	R2 051
(ix) Exceeds R6 000 000 but not R8 000 000	R2 442
(x) Exceeds R8 000 000 but not R10 000 000	R2 854
(xi) Exceeds R10 000 000 but not R15 000 000	R3 397
(xii) Exceeds R15 000 000 but not R20 000 000	R4 080
(xiii) Exceeds R20 000 000 but not R30 000 000	R4 755
(xiv) Exceeds R30 000 000	R6 794

The not so little, little charges

When you receive a conveyancing account from your transfer or bond attorney, in addition to the taxes, fees and charges that we explained above, a myriad miscellaneous line items are charged for. What are these and why are you being billed? Lets start by looking at the items normally found on your bill:

Post and Petties: This is a line item that the LSSA calls General disbursements, postages and petties – The prescribed tariff for this is R650 excluding Vat and this is charged over and above the prescribed fees. It is for copies, phone calls and other expenditure.

Fica Fees: Attorneys are accountable institutions under the Financial Intelligence Centre Act as Amended and must retain all clients fica records for a period of 5 years. To keep these records attorneys charge a fee. We charge R150 plus Vat per client.

Document generation fees: Attorneys pay for each instruction the bank send them as well as soft ware subscription fees for the drafting of both transfer and bond documents. This payment is levied by the bank's software service provider as well as the attorney's software provider and the attorney in turn pass these expenses on to the client. The LSSA authorise this in their fee guidelines. Expect a charge of between R400 and R950 depending on the provider and the attorney involved.

SARS submission or e-filing fees: Most attorneys charge a fee equal to the real expense their software vendor charge for the loading and receipt of Transfer Duty or Vat receipts on e-filing. Expect a charge of around R100.

Remember that many of these charges will appear on both the transfer and bond attorneys bill.

City Council Fees

Depending on the wording of the sale agreement or offer to purchase either the Seller or the Purchaser will be liable for the costs of arranging a rates clearance certificate from the local authority in which jurisdiction the property falls. Because of the state of our local authorities it became common practice for attorneys to appoint a consultant to obtain the final figures and to arrange the clearance certificate. This must be done with the upfront permission of the party that will pay for this service and the attorney is not allowed to charge a fee over and above the consultants fee. Remember the Seller pays the amount outstanding to the Municipality, only in rare cases will this be paid by the Purchaser.

Many Local Authorities now have online application procedures that actually works well and in these cases no fees are charged to clients. For now these seem to be the rural and various Ekurhuleni councils. All councils add an admin fee as part of the rates figures and these are paid by the Seller when payment of the figures are made.

City Council Charges

- Most municipalities calculate their charges for a clearance certificate 4 months in advance. To do this they take the average water and electricity consumption of the property over the preceding months plus the rates, sewer and refuse charges applicable to the property and multiply it by 4. To this they then add any arrear balances owing by the Seller and provide the transfer attorney with rates clearance figures.
- The anomaly is that even though you pay for the 4 month period, the Deeds Office only recognise the certificate to be valid for 60 days from the date of issue irrespective of the validity date the council shows on the certificate. In a recent court case the court held that a Seller can refuse to pay more than the 60 day period and the court also direct to calculate their figures to only reflect the 60 days. For now council's have not yet adhered to this but expect changes to this method of calculation soon.
- As previously stated the Seller are almost always liable for the charges payable to council as these represent the outstanding debt owed on the property.

Extra charges when buying a Sectional Title Unit or property subject to a Home Owners Association.

- As if the above is not already confusing enough Sectional Title properties attract extra charges for both the Seller and Purchaser. In addition to all the charges above, if a unit is sold with an exclusive use area that's held under a notarial deed of cession the Purchaser can expect to pay an additional R3000 in fees for the cession of the exclusive use area.
- Bond attorneys also need to proof that a unit is adequately insured and this is done by way of an insurance certificate obtained through the insurer of the complex. A Purchaser can expect to pay between R500 to R1000 extra at the bond attorney as most insurers charge for this certificate.
- The Body Corporate (BC), as is the case with the City Council also need to give a certificate confirming all levies are up to date. This is usually done at an admin fee of between R500 and R1500 which fee, depending on the wording of the agreement will be payable by the Seller or the Purchaser.
- Similarly the BC will provide the attorneys with an estimated figure calculated in advance taking average consumption and any arrears into consideration. Here again the Seller is almost always liable for the charges. Many BC's then request the attorneys to do a pro rata calculation between the parties on transfer and for this reason the bill for a Sectional Title Property almost always include a provision for levies and fees.
- The exact same principles apply to properties that are part of Home Owner Associations.

Charges payable by the Seller

A Seller of property is liable for the below charges. This is over and above the municipal and other expenses already dealt with above:

- The costs to cancel any existing bonds. This vary but a Seller should budget R4000 if he/she only has one bond up to R7000 if more bond were registered over the property. This amount is payable to an attorney appointed by the Seller's bank called the Bond Cancellation Attorney.
- Electrical, Electrical Fence and Gas compliance certificates. At the coast also a wood borer certificate and in Cape Province also a plumbing certificate.
- The cost of applying for a refund from the City Council for money that was over paid. This is not part of the normal conveyancing work and the LSSA recommend a fee of R470 excluding vat and most attorneys also appoint a consultant to assist with this. The appointment of a consultant must be pre-authorized with the Seller.
- Lastly remember the implications of Capital Gains tax and if the Seller is a foreigner Withholding Tax.