

# *MCDevelopersGuide*



**M.C. VAN DER BERG** INC  
INC  
ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys

# INDEX

1.	Introduction .....	2
2.	M.C. van der Berg Incorporated – An Introduction.....	2
3.	The role of the employees at M.C. van der Berg Incorporated.....	2
4.	Terminology .....	3
5.	Property terms.....	4
6.	Regulating and managing the sectional title scheme .....	6
7.	Homeowners’ Association (HOA) .....	6
8.	Roles of the different attorneys .....	7
9.	Completing the unit and occupation certificate .....	8
10.	Snags.....	8
11.	Practical Completion Letter .....	8
12.	Occupation and occupational rent .....	8
13.	Sectional Plan and Sectional Title Register .....	9
14.	Provision of the purchase price .....	10
15.	Bond Conditions.....	11
16.	Transfer and bond registration.....	11
17.	Guarantees from the approved bond .....	11
18.	Costs.....	12
19.	Consumer Protection Act (CPA) .....	12
20.	South African Revenue Service (SARS) .....	12
21.	Compliance Certificates (COC’s) .....	13
22.	What purchasers need to do when opening a new municipal account .....	13
23.	FICA (Financial Intelligence Centres Act) and POPI (Protection of Personal Information Act) .....	14
24.	Signing documentation at our offices .....	15
25.	Finances – payments .....	15
26.	What happens after registration.....	15
27.	Our commitment.....	16
28.	Message from the directors .....	16

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**Indemnity - This guide provides general legal advice. It is not to be construed as specific advice applicable to your transaction and no rights or obligations are created. Changes in legislation, procedures and processes are frequent and readers are advised to contact us to ensure they obtain transaction specific advice.**

## 1. Introduction

If you are reading this guide you purchased a new property from a developer.



***M.C. van der Berg Inc. compiled this MCDevelopersGuide to assist purchasers. It is important to read this guide as it contains valuable information about the transaction, the development process and procedures in our office.*** It also contains important references to the rights of both the purchaser and the developer.

Because we know you are busy, we have taken the opportunity to highlight certain aspects. ***Take particular note of all the items marked with*** 

The MCDevelopersGuide is also available on our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za).

This guide also assists estate agents and developers to comply with their obligations in terms of the Consumer Protection Act (CPA) by providing information to the consumer.

## 2. M.C. van der Berg Incorporated – An Introduction

***M.C. van der Berg Inc. Attorneys, Conveyancers and Notaries is a well-established law firm specialising in property law since 1999.*** Our company conducts business in the greater Pretoria, Centurion, Ekurhuleni, Midrand, Johannesburg and surrounding areas.

***The primary focus of our practice is giving legal advice pertaining to property law, drafting agreements, attending to property transfers as well as registering new bonds and cancelling existing bonds.***

***We also attend to the registration of trusts, estate planning, drafting of wills, winding up deceased estates, registration of ante nuptial contracts and other notarial services.***



***For more information on M.C. van der Berg Inc. please visit us at [www.mcvdberg.co.za](http://www.mcvdberg.co.za).***

## 3. The role of the employees at M.C. van der Berg Incorporated

The ‘conveyancer’ and the ‘conveyancing secretary’ will primarily attend to your transaction.

The *conveyancer* is an admitted attorney with a further qualification in property law. He/she ensures that the documentation is legally compliant, the correct procedures are followed and funds are paid out correctly.

The *conveyancing secretary* attends to the day-to-day administration of the transfer and bond registration process. You will mainly correspond with her at the start of the transaction. She will be able to answer most of your questions. The *conveyancer* is available should you need legal advice or wish to discuss anything.



***Our first letter specifies the name of the conveyancer and the conveyancing secretary attending to your transaction.***

If you believe the level of service from either the *conveyancer* or the *conveyancing secretary* does not meet your expectations, you are welcome to contact any of the directors of M.C. van der Berg Inc. namely Sonja du Toit, Tiaan van der Berg, Nicole Alberts or Ramona Michael.

## 4. Terminology

### Parties to the agreement of sale

**Purchaser** – The person/s or entity (Company, Close Corporation or Trust) entering into the agreement of sale with the developer to purchase property (you).

**Seller** - see Developer.

**Developer** – The seller in the agreement of sale who is also attending to the development.

**Builder/Contractor** – The person or entity undertaking the construction work.

**Estate agent** – The representative of the developer who facilitates the process of introducing the purchaser to the property and attends to the agreement of sale. The estate agent is entitled to commission as the effective cause of the transaction.

### Attorney definitions

**Attorney** – A person admitted by the High Court and who practises law.

**Conveyancer** – An attorney who passed an additional exam, who is admitted by the High Court and specialises as conveyancer in property law. All the attorneys employed by M.C. van der Berg Inc. are admitted conveyancers.

**Transferring attorney** – The firm of attorneys responsible for the transfer of the property to the purchaser. The transferring attorney plays a pivotal role in the successful completion of the transfer process. In your transaction the developer appointed M.C. van der Berg Inc. as transferring attorney.

**Bond attorney** – The firm of attorneys responsible for the simultaneous registration of the purchaser's bond. This attorney firm must serve on the home loan registration panel of the specific bank.



***M.C. van der Berg Incorporated serves on the home loan registration panels of ABSA, Nedbank, FNB, Standard Bank, HIP (Housing Investment Partners) and SA Home Loans.***

### Registration terms

**Registration** – An administrative act in the deeds office when the property is transferred into the purchaser's name and the purchaser's bond (if applicable) is registered simultaneously. The transaction is finalised on this date.

**Transfer** – This is another word for registration, which refers specifically to the administrative act where ownership is passed from the developer to the purchaser. On the date of transfer, the purchaser becomes the owner of the property.

**Bond registration** – This is another word for registration, which refers specifically to the administrative act where the purchaser's bond is registered over the property in favour of the relevant bank.

### Contract terms

**Offer to purchase (OTP)** – A written offer that the purchaser makes to a seller (developer), which outlines all the conditions on which the purchaser wishes to purchase the property. A *pro forma*

agreement is usually presented to the purchaser via the estate agent. You should read and understand the conditions contained in the agreement before making the offer.

**Contract** – The ‘offer to purchase’ becomes the contract or agreement of sale once the developer accepts it in writing. The contract constitutes a binding agreement between the purchaser and the seller.

**Cancellation of the contract** – Contrary to popular belief, neither party can summarily cancel the contract. The purchaser and seller can only cancel the contract by agreement, or if the proper legal steps, as outlined in the contract, are followed. If the developer cancels the contract due to the purchaser’s non-compliance with the terms of the agreement, or if the purchaser summarily cancels the contract, the purchaser can be held liable. The developer will be able to claim damages, the transferring and bond attorneys can claim wasted costs and the estate agent may claim commission.

### **Other role players**

**NHBRC** – This is an acronym for the ‘National Home Builders Registration Council’. The NHBRC is a statutory regulatory body to the home building industry. The purpose of this council is to protect consumers against unscrupulous builders.

**NHBRC registration certificate** – All builders and developers must register with the NHBRC. The NHBRC’s website ([www.nhbrc.org.za](http://www.nhbrc.org.za)) enables a purchaser to confirm that the builder is indeed registered with the NHBRC.

**NHBRC Enrolment Certificate** – Not only is a builder required to register with the NHBRC, but the specific development must also be enrolled as a project with the NHBRC. An NHBRC enrolment certificate is issued for each property in the development.

A purchaser’s bank will not give permission to register a bond if it is not in possession of both the NHBRC registration certificate and the NHBRC enrolment certificate.

**Surveyor** – A qualified professional person involved in measuring and demarcating sections and exclusive use areas as well as drafting sectional title plans.

**Surveyor General** – The government office responsible for approving the sectional title plans.

**Engineer** – Several engineers are involved in a property development, ensuring that foundations, construction, roofing, electrical supply, storm water, sewerage, roads etc. meet the required standards. Engineer’s certificates are issued if the necessary standards are met.

**Architect** – A qualified professional who attends to the design of the development and drafts the building plans.

**Deeds Office** – The government office responsible for keeping public record of immovable property ownership and providing a land information system.

## 5. Property terms

South African property law provides for two different forms of ownership in immovable property, namely:

- 1) **Full title property** – The owner owns the erf as indicated on a general plan and all the improvements such as the dwelling, plants, pool, tennis court, lapa etc. Full ownership therefore vests in the owner of the property.
- 2) **Sectional title property** – The owner owns a ‘section’ together with an undivided share in the ‘common property’ as shown on a sectional title plan. The Sectional Titles Act (STA) and the Sectional Title Schemes Management Act (STSMA) regulate certain aspects of the sectional title development.

As a prospective owner of a sectional title unit, you have to take note of the following terms:

**Section** – A specific structure indicated on a sectional plan, in other words the dwelling. The purchaser acquires sole ownership of the section but not sole ownership of the land surrounding the section.

**Common property** – The land and the parts of the building or buildings which do not form part of a ‘section’. All roads, gardens, pools, braai areas, staircases etc. are thus common property. The owners of all the units in a sectional title scheme are the joint owners of the common property in undivided shares according to their *participation quota* (see definition below).

**Unit** the word ‘unit’ refers to the combination of the section and an undivided share in the common property. People often use this word to refer to their section.

**Exclusive use area (EUA)** – In some instances the developer (when establishing a sectional title development) or the body corporate (at a later stage), allocates specific areas of the common property for the exclusive use of a specific owner. This can include gardens, parking, garages, etc.

EUA ownership vest in one of two ways:

- 1) The EUA is formally registered in the name of the owner of the unit in terms of section 27 of the STA. The EUA is demarcated on the sectional plan and ceded to the purchaser by way of a notarial deed.
- 2) The EUA is reserved for the use of a specific owner of a unit in terms of section 10(7) of the STSMA. In this case, the EUA is not formally registered against the owner’s name but is allocated in terms of the sectional title scheme’s rules with a layout plan demarcating the specific area.

Although the legal nature of the rights differs, the effect is similar, in that a certain part of the common property is allocated for the sole use of a particular sectional title owner.

**Sectional title plans** – A surveyor drafts these plans, which are registered at the Surveyor General’s office. Sectional title plans indicate the boundaries of each section as well as the exclusive use areas, if applicable.

**Phased development** – A developer may reserve the right to extend a development by adding more units in future phases. If this right is reserved, it will be disclosed and is usually contained in the offer to purchase (OTP).

## 6. Regulating and managing the sectional title scheme

The Sectional Title Scheme Management Act regulates the management of a sectional title scheme. The most important terms relating to sectional titles are:

**Body Corporate** – The owners of all the sections collectively form the body corporate. The body corporate has certain powers. It is obliged to meet at least once a year at an annual general meeting (AGM). At body corporate meetings, sectional title owners can cast votes on issues relevant to the sectional title development such as selecting trustees and approving the budget.

**Trustees** – Trustees are the elected representatives of the owners in a sectional-title scheme who are entrusted to manage the scheme in good faith and with its best interest in mind.

**Managing agent** – A company who specialises in managing sectional title schemes, as well as collecting levies. The developer initially appoints the managing agent.

**Levies** -In a sectional title scheme there are collective interests such as maintenance of the common property, garden services, security and insurance which are funded by levies.

**Participation quota** – Participation quota is the expression of the size of any specific section in relation to the combined sizes of all the sections. Levies are calculated according to this formula. It ensures that the owners of smaller units pay lower levies than those with bigger units. The surveyor calculates the participation quota of each section and it appears on the sectional title plans.

**Insurance** – The body corporate is obliged to insure the structure of the section as well as the roof and geyser. The insurance instalment is included in the levy. The bond registration attorney obtains an insurance certificate from the relevant insurance company before bond registration can take place. The purchaser may be required to carry the cost of the certificate.

**Rules** – Every sectional title scheme has rules to ensure proper management and conduct. Although the STSMA contains a standard set of rules which is usually incorporated, the developer can amend the rules. There are two sets of rules, namely:

- 1) **Management rules** – 1) Management rules regulate the day-to-day management of the sectional scheme.
- 2) **Conduct rules** – Conduct rules regulate the conduct of owners, their guests or tenants. It also contains the do's and don'ts of the scheme e.g. "*May I keep pets?*"

Ask your estate agent for a copy of the rules.

## 7. Homeowners' Association (HOA)

Your unit may fall within an estate regulated by a homeowners' association (HOA). If this is the case you will automatically become a member of the homeowners' association and be subject to its rules and regulations. Obtain a copy of the rules beforehand and familiarise yourself with it. Do not confuse HOA rules with body corporate rules. An additional HOA levy will also be payable.

## 8. Roles of the different attorneys

Various conveyancing firms may be involved in a property transaction, depending on the nature of the transaction and the required actions in the deeds office. Different attorneys or a single firm can attend to these actions. It is obviously much faster and more convenient if only one law firm attends to all aspects of the transaction.

**The different role players are:**

### 8.1 The transferring attorney

The transferring attorney, appointed by the developer, is the conveyancer responsible for transferring the property into the purchaser's name.

The transferring attorney's responsibilities include:

- ensuring that the parties comply with the terms of the sale agreement and enforcing the terms, if necessary;
- drafting all the transfer and bond documents and overseeing the signature thereof;
- obtaining the transfer duty receipt/exemption from SARS and clearance certificates from the relevant municipality and HOA's (and sectional title body corporate if applicable);
- holding the deposit in trust and dealing with the financial aspects of the transaction;
- coordinating the lodgement of the documents at the deeds office;
- ensuring that the relevant certificates of compliance (COC's) are in place (e.g. the electrical and gas certificates).

### 8.2 The bond registration attorney

The bond registration attorney is the conveyancer who oversees the registration of the purchaser's bond.



***M.C. van der Berg Inc. serves on the bond registration panels of Absa, FNB, Nedbank, Standard Bank, HIP (Housing Investment Partners) and SA Home Loans.***

The bank granting the loan will automatically appoint us as the bond registration attorney in the event of sectional title developments and accordingly we will attend to the registration of the property into your name and also attend to the registration of the bond.



***As the bond registration attorney, we deal with various aspects which specifically relate to building documents and retentions. These include:***

- receiving building documents from the developer and forwarding it electronically to the bank;
- drafting and signing of all bond documents;
- uplifting the retention; and
- obtaining a proceed from the bank before we can lodge and register the bond in the deeds office. To obtain a proceed instruction, the necessary documents (which include the bond documents signed by you, as well as FICA documents) are sent to the bank for approval. The

bank also verifies that all special conditions as contained in the loan agreement have been complied with. Once all documents are found to be in order and all conditions have been complied with the bank issues a proceed for bond registration.



**Read our MCBondGuide for a comprehensive discussion of bonds.**

## 9. Completing the unit and occupation certificate

If you are purchasing a completed sectional title unit in a new development, it may be ready to be occupied and it can be transferred in a short amount of time.

Alternatively, the purchaser can purchase a unit from plan where construction has not even commenced.

In the second scenario, the purchaser must be mindful of the following:

- 1) Since the developer must first complete construction, it can take any length of time, depending on the progress of the construction at the date of concluding the agreement.
- 2) After completing construction, the developer must obtain an occupation certificate from the local municipality. Occupation of the unit can only be granted once the occupation certificate is issued. The transfer and bond documents can only be lodged for registration at the deeds office after completion of the units.

## 10. Snags



A snag is by definition a minor defect of cosmetic nature such as a chipped tile. ***Snags are not to be confused with practical completion of the property.***

The agreement of sale will set out how snags are dealt with by the developer.

## 11. Practical Completion Letter

Once the sectional title unit is completed, the purchaser will be required to sign a document called the ‘practical completion letter’ (often erroneously referred to as ‘the happy letter’). Note that a practical completion letter is required by the banks to prompt the bank’s valuator to visit and to inspect the property on its behalf. If the valuator is satisfied that the property has been completed and that no defects (which will affect the bank’s security) are present, he/she will inform the bank to uplift the retention of the loan amount.



***Do not confuse the practical completion document with a snag list! Signing a practical completion letter does not amount to declaring that the property is free of snags.***

It is imperative that the purchaser signs the practical completion letter as soon as the section is completed to avoid delaying the entire registration process.

## 12. Occupation and occupational rent

The term ‘**occupation**’ refers to the date on which the seller is obliged to give unhindered possession of the property to the purchaser, from which date the purchaser will pay occupational rent.

If the agreement of sale stipulates an estimated occupation date, circumstances may necessitate the postponement thereof. If the occupation date is postponed we will inform you as soon as possible.



***Although the purchaser is not obliged to take physical occupation of the unit on the occupation date, he/she will be held liable for occupational rent from the occupation date as stipulated in the contract.***



***Before occupation the following contractual requirements must be met:***

- 1) All transfer documentation must be signed;
- 2) All bond registration documents must be signed;
- 3) The purchaser's FICA documentation must be in order;
- 4) All costs and disbursements must be paid and cleared;
- 5) All deposits must be paid and cleared;
- 6) Guarantees must be issued;
- 7) The practical completion letter must be signed;
- 8) Occupational rent must be paid and cleared.

Occupational rent is payable in advance before occupation can be taken. We will not be able to confirm receipt of the funds unless it reflects in our trust account. The developer will not give occupation until the funds reflect.

### 13. Sectional Plan and Sectional Title Register

The transferring attorney create the units in the deeds office registry by registering the sectional plan and opening the sectional title register.

#### 13.1 Registration of the sectional plan

A surveyor demarcates the sections together with exclusive use areas (if applicable) on a sectional plan. The draft sectional plan is then approved at the Surveyor General's office. Thereafter, the conveyancer will be able to register the approved sectional plans at the deeds office.

As part of the process, the surveyor will visit the site from time to time to measure and map the sections as the developer continues with construction.

A surveyor measures a section by taking inside measurements (inside wall to inside wall). The architect (from which plans the purchaser purchases the section) indicates the outside measurements on his plans. There will thus be a discrepancy between the size of the section stipulated in the contract and that of the surveyor's plans, which will be a few square metres smaller.

#### 13.2 Opening the sectional title register

The conveyancer uses the approved sectional plans to draft the legal documentation necessary to open the sectional title register and create the sectional title units.

Registration of the sectional plans, opening of the sectional title register, transfer of the units and registration of bonds are often lodged simultaneously at the deeds office.

## 14. Provision of the purchase price

The purchase price can be provided from one of the following sources:

### 14.1 Deposit



***If the purchaser indicates that he/she will pay a deposit, this must be paid to us in the amount and on the due date set out in the agreement of sale.*** The deposit will then be invested and interest will accrue for the purchaser's benefit.

All amounts payable to our firm must be paid into our trust account. You will have received our banking details in our initial letter to you.

Our file reference number (as indicated on the initial letter) is the best form of reference for any payments into our trust account. Kindly send proof of payment to the conveyancing secretary. This will enable her to identify your payment on the bank statement and invest the funds to your benefit.

### 14.2 Mortgage Bond

If the purchaser requires funds from a financial institution he/she will make the agreement of sale subject to the approval of a loan.



***The purchaser must proceed with the loan application immediately after signature of the agreement of sale.***



***If your loan is not approved before the due date for the required amount, the agreement of sale is null and void.***

Obtaining loan approval should not take longer than a month. Circumstances sometimes require a longer period for loan approval.



***The developer will require that you to make use of a specific bond originator who is familiar with the development. This is because the bond originator has done a pre-evaluation of the proposed development and liaised with the various banks. Using a designated bond originator to apply for a bond on your behalf will expedite the application and improve your chances of success!***

### 14.3 Selling your current property

Most developers are not keen to accept an offer from a purchaser who still needs to sell his/her



***property to obtain funding. If the seller is willing to accept your offer subject to the sale of your currently owned property, it will be to your advantage if we draft the agreement of sale for that property, as we will ensure that the timelines are synchronised.***

### 14.4 Investment

If funds are provided from an investment, deliver guarantees against the investment as and when requested by the conveyancer. Alternatively, the funds must be withdrawn from the investment and paid into the transferring attorney's trust account.

## 15. Bond Conditions

Depending on each bank's requirements and the nature of the development, the bond attorney has to supply all or some of the following documents to the bank before the bank gives permission for the upliftment of the retention and registration of the bond:

- 1) the approved sectional title plans;
- 2) the approved building plans of the property;
- 3) the builder's NHBRC registration certificate;
- 4) the NHBRC enrolment certificate for the property;
- 5) the engineers' certificates;
- 6) the electrical compliance certificates (COC);
- 7) the occupation certificate issued by the municipality as soon as the property is completed and the municipality's building inspector has inspected the property; and
- 8) the practical completion letter as signed by the purchaser.



***Take note that we cannot transfer the unit unless all documents are in order and the bond conditions are met.***

## 16. Transfer and bond registration

Transfer of the unit can only commence after:

- 1) the unit is completed;
- 2) the sectional plans are approved at the Surveyor General;
- 3) sectional plans are registered;
- 4) the sectional title register is opened;
- 5) all bond conditions are met; and
- 6) the purchaser complies with all the contractual requirements.

## 17. Guarantees from the approved bond

The purchaser must deliver guarantees within the timeframe as set out in the agreement of sale. The bank authorises the bond attorney to issue the guarantees on its behalf as soon as the bond documents are signed.



***The purchaser's responsibility is to comply with all the contractual obligations and requests by the transferring and bond registration attorney and to sign all the documents as and when required.***

The developer can cancel the agreement of sale if guarantees are not delivered on time and the purchaser does not remedy this breach of the agreement's terms.

## 18. Costs

Transfer and bond registration costs are usually included in the purchase price to assist prospective purchasers. The developer therefore pays the transfer and bond registration attorneys, subject to certain terms and conditions for example that the transferring attorney must also oversee the bond registration and that the purchaser makes use of the developer's bond originator.



***The included costs only refer to costs directly related to the transfer and bond registration. It excludes banks charges (initiation fees) and disbursements payable to insurance companies (insurance certificate fees) etc.***



The bank charges an initiation fee, which varies in amount from bank to bank. ***The purchaser may opt to pay the initiation fee upfront, or include it in the loan amount, thereby financing it over the term of the loan.*** If the purchaser wants to include the initiation fee in the loan amount, he/she must inform his/her bond originator or personal banker accordingly when applying for the loan.



***It is important to establish whether costs are included in the purchase price and to which extent. Your agreement of sale will stipulate this clearly.***

## 19. Consumer Protection Act (CPA)

The primary objective of the CPA is to protect consumers in commercial transactions. The CPA will usually be applicable when purchasing in a new development. If the CPA is applicable the purchaser can avail him/herself of certain statutory guarantees/warranties as set out in Section 55 of the CPA.

The purchaser is entitled to accept that the property he/she has bought:

- 1) is reasonably suitable for the purpose for which it is generally intended;
- 2) is of good quality, in good working order and free of any defects;
- 3) will be useable and durable for a reasonable period of time, having regard to the normal use; and
- 4) complies with the applicable standards set under the Standards Act.

These guarantees/warranties can be limited in terms of Section 55(6) of the CPA if a purchaser is expressly informed that the property is offered in a specific condition and the purchaser has expressly agreed to accept it in that condition, or knowingly acts in a manner consistent with accepting the property in that condition.

## 20. South African Revenue Service (SARS)



***A property transaction cannot be processed unless both parties have income tax numbers. If the purchaser does not have a tax number, he/she must apply for an income tax number.***

As a developer is usually a registered VAT vendor, the purchase price will include VAT, and the purchaser does not pay transfer duty.

The transferring attorney must obtain a 'transfer duty exemption' certificate from SARS before the transfer documentation can be lodged at the deeds office. SARS does a risk analysis on both the purchaser and the developer before the certificate is issued. All the seller's and purchaser's tax-related matters (whether private or otherwise), including tax returns and payments, should therefore be up to date. It is the purchaser's responsibility to ensure that his/her tax affairs are in order. Failure to do so can result in the transaction being delayed or even cancelled.

## 21. Compliance Certificates (COC's)

According to the Occupational Health and Safety Act, a developer has to provide the purchaser with certain compliance certificates. The cost of these certificates is for the developer's account.



***We will provide you with the relevant certificates as soon as possible. Keep them safe as you might need them again if you resell your property.***

The following certificates may be required:

### 21.1 Electrical certificate of compliance

This certificate certifies that the electrical installation is safe and complies with the applicable SABS standards. The certificate may not be older than two years from the date of issue thereof.

### 21.2 Electric fence compliance certificate

This certificate certifies that the electric fence (if applicable) is safe and complies with the applicable SABS standards. This certificate is in addition to the electrical certificate of compliance.

### 21.3 Gas certificate

This certificate certifies that the gas installation (if applicable) is safe and complies with the applicable SABS standards.

### 21.4 Plumbing- or water certificate (only applicable to properties in the Cape Town area)

The issuing of a plumbing- or water certificate in the municipal jurisdiction of Cape Town is a prerequisite for transfer in this area. In terms of the Cape Town Water By-Laws of 2010 (section 14), sellers are obliged to obtain a plumbing certificate from a certified plumber.

### 21.5 Beetle certificate (only applicable to properties situated in coastal areas)

This certificate guarantees the absence of beetles in or on the property. It is important to ensure that the certificate includes a guarantee with regards to all beetles and not only for a specific species of beetles.

## 22. What purchasers need to do when opening a new municipal account

It is important to distinguish between the terms 'utility account' and 'rates and taxes account' when opening an account at the municipality.

The utility account must be opened in the purchaser's name at the municipality immediately after registration of transfer. For this purpose, the purchaser must deliver the following documentation to the municipality to open a 'utility account' in his/her name:

- 1) A completed form with particulars of the purchaser as required by the municipality;
- 2) A copy of the purchaser's identity document;
- 3) A copy of the agreement of sale;
- 4) A letter from our offices to confirm that the property is registered in the name of the purchaser (we email this confirmation to you on the date of registration) and
- 5) A deposit payable when opening the account.

After the purchaser has opened the utility account at the municipality, they will provide him/her with a monthly statement.

To open a '*rates and taxes account*', we provide the municipality with written confirmation as well as proof from the deeds office (a deed search) that transfer of the property in the purchaser's name has indeed taken place. We hand deliver this confirmation to the municipality and will forward a copy of the confirmation to the purchaser. Although the municipality will hereafter be in a position to open the rates and taxes account in the purchaser's name, it can take up to six months before this is actually done.



***We advise the purchaser to visit the municipality personally after receiving our notification to ensure that the rates and taxes account has indeed been opened in his/her name. This will avoid the nasty surprise of an accumulated rates and taxes account for several months.***

## 23. FICA (Financial Intelligence Centres Act) and POPI (Protection of Personal Information Act)

### 23.1 FICA

'FICA' is an acronym for the 'Financial Intelligence Centres Act'. FICA requires certain nominated persons and institutions like attorneys, banks, and estate agents to verify certain information and keep records thereof. Accordingly, you will have to provide us with documentation, for example your identity document and proof of residential address.

We have a statutory obligation to disclose and report certain suspicious transactions. The primary objective of FIC legislation is to prevent money laundering and stop the flow of money earned from illegal activities.

FIC legislation obliges transferring attorneys to report transactions involving cash payments of R25 000 or more to the Financial Intelligence Centre (FIC). ***Our first letter to you contains a list of original FICA documents which you need to bring along when you sign the transfer and bond documents at our office.***



## 23.2 POPI

'POPI' is an acronym for the 'Protection of Personal Information Act'. In terms of this Act, we need your consent to process your personal information (for example your identity number, contact details, email address etc.). We will present this consent for your signature when you sign the transfer, bond cancellation and/or bond documentation at our offices. We will only process your information for transfer, bond cancellation and/or bond related purposes.

## 24. Signing documentation at our offices

We schedule an appointment with the purchaser to sign the necessary documentation as soon as the suspensive conditions and the requirements in respect of the development are fulfilled and the conveyancing secretary has drafted the documents.

If any of the parties involved are not available to sign, it will obviously delay the registration process.



***Kindly inform us in advance of any planned travel arrangements.***

We prefer that clients sign documents at our office, as copies of your original FICA documents must be made, electronic signature of the home loan documents are required and the professional team is at hand to answer any questions you may have. We are willing to accommodate you as a valued client by arranging an appointment at our offices either before or after normal working hours or, if it is impossible for a purchaser to visit our offices, one of our attorneys can visit you.

If we are appointed as the bond attorney, we will email the bond registration documentation to the purchaser to study at his/her own convenience prior to signing at our offices. (Note that the purchaser is not required to bring along copies of the bond documentation to the scheduled appointment).



***Bring the originals of all documentation, as requested by the conveyancing secretary, to your appointment. FICA requires us to verify the authenticity of all copies we make for our file.***



***Directions to our offices are on our website [www.mcvdberg.co.za](http://www.mcvdberg.co.za) under the heading 'Contact us'.***

## 25. Finances – payments

The guarantees usually pay out at midnight on the date of registration.



***To protect our clients and to prevent fraud, M.C. van der Berg Inc. will only pay funds to the contracting parties or their attorneys.***



***We finalise final statement of accounts within 48 hours after registration, provided the guarantees pay out timeously.***

## 26. What happens after registration

After registration your title and bond deed (if applicable) are numbered, scanned, and captured on the deeds office's database. Once these processes are completed (usually this takes about one month) the deeds office delivers the documents to us.

If the purchaser registers a bond over the property, the bond registration attorney delivers the registered bond and title deed to the bank for safekeeping. We will provide the purchaser with a copy of the title deed. If the purchaser has not registered a bond, we deliver the original title deed to the purchaser for safekeeping.

## 27. Our commitment

M.C. van der Berg Inc. strives to provide our valued clients with professional, prompt, friendly and personal service.

You can expect that:

- 1) We will register your transaction as speedily as possible, taking into consideration the additional requirements and timeframes applicable to new developments;
- 2) We will assist you with professional, pro-active service;
- 3) We will answer your telephone calls and emails within 24 (twenty four) hours;
- 4) We will deal with your transaction confidentially;
- 5) You will have access to the firm's conveyancers should you require any assistance;
- 6) A conveyancer will be available at our offices when you sign your documentation;
- 7) You will be assisted in Afrikaans or English, according to your preference. (Note, however, that our service level agreements with banks stipulate that bond documentation must be drafted in English);
- 8) Settlement will occur within 48 (forty-eight) hours after registration;
- 9) You will receive continuous feedback regarding the progress of your transaction;
- 10) The original new title deed (or a copy) will be forwarded to the purchaser once we receive it from the deeds office.

## 28. Message from the directors

The directors of M.C. van der Berg Inc. trust that this MCDevelopersGuide provides essential information and useful advice.

We furthermore trust that the information contained in this guide together with our professionalism, effectiveness and knowledge will result in a trouble-free, pleasant and exceptional business experience.



***You are welcome to contact us if you have any queries. Visit our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za), contact us on 012 660 6000 or send an email to [info@mcvdberg.co.za](mailto:info@mcvdberg.co.za)***

**M.C. VAN DER BERG<sup>INC</sup>**  
**ATTORNEYS, CONVEYANCERS & NOTARIES**  

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Your Property Attorneys

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**Midstream:** G1 Ashford House, 7 Ashford Road, Midstream Estate, Ekurhuleni

**Pta East:** 32 Garsfontein Office Park, 645 Jacqueline Drive, Garsfontein, Pretoria