

# *MC Midstream Guide*



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

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*Your Property Attorneys*

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**Legal indemnity - This *MCMidstreamGuide* is provided to you by M.C. van der Berg Inc. in an attempt to give general legal advice regarding property transfers in the greater Midstream. It must not be construed as being specific advice applicable to your transaction. Furthermore, it does not bind us, the banks, any of the HOA’s, Bondev, MES or any other party. Changes in legislation, procedures and processes are frequent and the readers must contact us to ensure that they obtain up-to-date and correct advice.**

## 1 MCMidstreamGuide


This *MCMidstreamGuide* is made available to you by M.C. van der Berg Inc. It provides general legal information about buying and selling property specifically in the greater Midstream area.


Because we know you are probably busy, we have taken the opportunity to highlight certain aspects.


***Take particular note of all the information marked with ***

 ***Please read the MCMidstreamGuide before making or accepting an offer on a property in Midstream.*** It discusses general legal matters relating to property transactions in Midstream and the important stumbling blocks you might encounter in the legal process that lie ahead. We trust the information will be of value and will result in a reciprocal business relationship. We shall gladly assist you in dealing with the labyrinth of laws, rules, regulations and contractual requirements that accompany the sale and purchase of a property.

## 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. While our head office is in Centurion, ***we also have an office at G1 Ashford house, 3 Ashford Street, Midstream for the convenience of our Midstream clients. Our company conducts*** business in the Pretoria, Centurion, Ekurhuleni, Midrand, Johannesburg and surrounding areas.

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

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

 ***We deliver the following additional services to our Midstream clients free of charge:***

- Opening and closing the rates and taxes and utilities accounts at Ekurhuleni Metropolitan Municipality (EMM) on behalf of the seller and the purchaser;
- Following up and obtaining the seller's refund from the EMM;
- Opening the purchaser's HOA account and attending to the closure of the seller's HOA account;
- Handling the registration of the purchaser's account and closure of the seller's account at MES;
- Offering extended business working hours on request.

 ***M.C. van der Berg Inc. undertakes to handle the expedited and hassle-free transfer of your property and keep you informed with relevant and contextualised feedback on a regular basis.*** We believe that our unique and efficient feedback system is one of the aspects that differentiate us from others. You will not be kept in the dark and we shall keep you informed when important milestones in your transaction are reached.

 ***We offer a free consultation to discuss your transaction.***

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

### 3 Understanding Midstream Estates

In 2000 Bondev started developing Midstream on the farm formerly known as Olifantsfontein 410-JR. Midstream lies on the urban edge of Midrand, Centurion and Ekurhuleni but falls under the geographical governance and control of the Ekurhuleni Metropolitan Municipality (EMM).

Although the name 'Midstream Estates' is commonly used to refer to the entire development, (which we also do in this guide), the development actually comprises a group of six independent residential estates. These are known as:

- Midstream Estates (the first estate)
- Midlands
- Midstream Hill
- Midfield (which includes Midstream Meadows)
- Midstream Ridge (which includes Midstream Heights)
- Retire@Midstream

Each of these estates has its own autonomous Homeowners Association (HOA). While there are understandably clear similarities, each HOA has its own board of directors, sub-committees, finances and estate rules. Every owner of a property must be a member of the relevant HOA in which estate that property is situated. A property owner ceases to be a member when he/she sells or otherwise disposes of the property.

The respective HOA's charge a monthly levy for various services rendered such as security, maintenance, gardens, roads etc.

The rules of each estate can be found on <https://stats.midstream.co.za/Search/smartSearch.aspx> (enter estate name and click on search, the relevant documents will show below).

In addition, the various estates also share specific interests and services such as emergency medical services, security, access control, Electrical Services (MES), Internet, the Midstream magazine as well as other practical and legal issues that might impact the common interests of all the estates. A forum called the GMF (Greater Midstream Forum), which consists of representatives from the various estates and other role players like Bondev, looks after these shared interests. Although no additional levy is payable by owners directly to the GMF, all owners indirectly contribute to these shared services via their levy.

Estate-related information regarding schools, churches, businesses, shops, restaurants, storage, wildlife, shuttle services, Gautrain shuttle, various clubs, gyms and medical services can also be found on the Midstream website.

### 4 Before entering into an agreement of sale

A purchaser's offer to purchase becomes the agreement of sale once the seller accepts it in writing. When a property is transferred, the agreement of sale and legislation create the rules applicable to the transferring attorney. ***It is therefore of paramount importance to read this MCMidstreamGuide and to obtain proper legal advice before putting pen to paper.***



***A properly drafted sale agreement lies at the heart of any successful and risk-free property transaction. Contact us for advice and a concept contract before you enter into a sale agreement.***

## 5 Rules of the game – the agreement of sale

The agreement of sale is the instruction and mandate given by the parties to the transferring attorney and we cannot deviate from it. Aside from scrutinising the concept contract before either party signs it, it's important to be aware of some key general legal concepts.



***Pro forma offers to purchase generally contain a clause stipulating that the agreement of sale will constitute the complete and only agreement between the seller and the purchaser.***

You should therefore not accept or give any verbal undertakings as it will be unenforceable. Remember that all the terms of the agreement should be in writing and be signed by both the seller and the purchaser.



***Pro forma offers to purchase generally also contain a clause stipulating that amendments and variations to the agreement of sale must be in writing and signed by the parties.***

No verbal amendments or variations to the agreement of sale will therefore be enforceable. If you appoint us as your transferring attorneys, we shall gladly assist with drafting these addendums.



***Remember! It is essential to communicate all requests and changes in the transactions to the other party through your estate agent or transferring attorney in order for them to draft the required addendums.***

## 6 Occupation and occupational rent

The term '**occupation**' refers to the date on which the seller is obliged to give vacant possession of the property to the purchaser.

Since the date of occupation poses risks for the seller and purchaser, the transferring attorney must regulate it to protect both parties. It can cost both parties dearly if the transaction is cancelled after taking occupation.

Once the parties agree in the agreement of sale to give occupation on a specific date, they are contractually and legally bound to this date. The transferring attorney cannot unilaterally, at the will of either party relax conditions or enforce conditions not agreed upon.



***It is therefore imperative that the parties apply their minds and contractually agree on which requirements must be in place before occupation can take place (for example, the loan must be approved and the deposit paid). M.C. van der Berg Inc. will monitor and enforce the requirements to be complied with before occupation can be taken. Should the transaction not proceed, evicting unwanted occupants is a costly and time-consuming exercise.***

The term '**occupational interest**' refers to the rent payable by either of the parties occupying the property while it is registered in the name of the other party.



***Kindly remember that a utilities account at the EMM cannot be opened in the purchaser's name before registration. Therefore, it remains for the seller's account until registration. In addition to agreeing on the occupational rent, both parties need to agree on an estimated advance amount for these utilities.***



***Fortunately, MES (Midstream Electrical Supplies) allows owners in Midstream to open their electricity accounts on occupation.***

## 7 Suspensive conditions

Sale agreements usually contain one or more suspensive condition. The sale agreement will not be legally enforceable and binding if the suspensive conditions are not fulfilled timeously and in full.


Any deviation from the terms of the suspensive condition has to be addressed in an addendum before the due date of such condition. We, together with the estate agent, monitor these dates and will contact you should we require an instruction to amend the due dates or alternatively, to amend the conditions.

There are typically two types of suspensive conditions in a sale agreement, i.e. the mortgage loan and the clauses which deals with the sale of another property.

### 7.1 Suspensive condition: Mortgage loan


Purchasers rarely have the resources to pay cash when purchasing a property. In most instances, therefore, the sale agreement will be made subject to the approval of a mortgage loan to protect the purchaser.

Depending on the purchaser's financial position, the approval of the mortgage loan should not take longer than a month. Circumstances may sometimes require a longer period and each case should be assessed on its merits.

The period allowed for the approval of a mortgage loan must serve both parties. On the one hand, it needs to be sufficient to give the purchaser a fair opportunity to obtain a loan yet on the other hand; it should not disadvantage the seller by removing the property from the market for a prolonged time.  ***Additional clauses can be written into the agreement of sale to enable the seller to continue marketing the property pending the approval of the mortgage loan and enabling the purchaser to take faster action if he/she receives a better offer.***

### 7.2 Suspensive condition: 'Subject to the sale of another property'

For various reasons (e.g. affordability or availability of funds) the purchaser or his/her bank often stipulates the prerequisite that his/her current property must first be sold and registered before transfer of the property or a new bond (that funds the transaction) can be registered. The proceeds from this preceding transaction are often also required to fund the subsequent transaction.

 ***If an offer to purchase is made subject to the sale of the purchaser's property, the parties must ensure that it is effectively dealt with in the agreement of sale to protect both the purchaser and seller.*** This matter is often handled haphazardly to the detriment of both parties. For example, the seller may not wish to decline the offer to purchase, but may also be reluctant to withdraw the property from the market for a prolonged period while awaiting the sale and registration of the purchaser's property.

If the offer is subject to both the approval of a bond and the sale of the purchaser's property, the bond approval date must commence from date of acceptance of the offer and not from date of sale of the purchaser's property. This means establishing whether the purchaser qualifies for the loan as soon as possible. The purchaser will be protected as the bank will grant the loan subject to the sale of his/her current property.

## 8 National Credit Act

In terms of the National Credit Act (NCA), the bank to which the purchaser applies for a loan must provide him/her with a quotation stipulating the loan amount, the interest rate, the administrative costs, the monthly payment and the total costs of the loan. This quotation is open for acceptance for five days after the date of issue thereof. On acceptance of the quotation, the bank will issue the final approval. This final approval should be obtained before or on the bond due date in the agreement of sale. ***If the quotation is not accepted within the time limit as set out in the agreement of sale, or the loan is approved for a lesser amount than required in the agreement of sale, it will have a disastrous effect since the contract will not be enforceable.*** Either party can consequently repudiate the transaction at any point before registration with absolutely no legal consequences.



## 9 Cancellation of the seller's existing bond

The existing bond over the seller's property must be cancelled at the deeds office to enable the simultaneous unencumbered transfer of the property into the purchaser's name. The misconception exists that the bond does not have to be cancelled if there is no outstanding balance on the loan account. There always has to be a formal bond cancellation in the deeds office.

As the transferring attorney, we obtain the outstanding balance (cancellation figures) from the seller's bank and ensure that guarantees are issued in their favour for the credit of the seller's account. Only once the seller's bank receives these guarantees will it consent to the cancellation of the existing bond.



***In terms of the National Credit Act, the bank may charge penalty interest (equal to three month's interest payable on the seller's bond) if it is not given 90 days' notice of the intention to cancel the bond.***

If the bond is cancelled during the 90-day period, *pro rata* penalty interest will be charged for the remainder of the penalty period. For example, if 90 days' notice was given and the bond is cancelled within 30 days from date of such notice, penalty interest will be charged on the remaining 60 days. The seller will be obliged to pay the full penalty amount, but will be refunded by the bank after registration.

The seller can give written notice to the bank of his/her intention to cancel the bond. However, our standard practice is to also notify the bank once we receive an instruction to transfer the property and the seller has confirmed the bond account number.



***Any prospective seller who is concerned that he/she will be liable for penalty interest, is welcome to send a request together with the bond account number to [bc@mcvdberg.co.za](mailto:bc@mcvdberg.co.za) where after we shall use the proper channels to notify the bank of the seller's intention to cancel the bond. The 90 days' notice period will commence once we give this notification.***



***Note that once cancellation figures are requested or this notice is given; the seller will not be able to access any additional funds from his/her bond account.***

## 10 Guarantees

A guarantee is a promissory document in terms of which a bank undertakes to pay an agreed amount on behalf of the purchaser to either the seller's mortgage loan account or to the transferring attorney's trust account on an unspecified future date when registration occurs. The transferring attorney must ensure that the purchase price is secured on date of registration and that the seller's mortgage loan is paid up and the bond is cancelled. The seller's bank will not consent to cancellation of the bond if the required guarantees are not issued in accordance with the cancellation figures. These guarantees can originate from various sources, which include the following:

### 10.1 From the purchaser's loan

The bond registration attorney or the bank that granted the loan issues guarantees once the purchaser has signed all the bond documentation and complied with all the requirements as set by the bank.



***It takes 10 to 14 calendar days after the bond is approved for the guarantees to be issued.***

### 10.2 From a cash deposit

If cash is involved in any portion of the purchase price, these funds will have to be deposited into the trust account of the transferring attorney to enable the attorney to issue guarantees.

### 10.3 From an investment

If the purchaser has funds invested at a South African financial institution, such institution can issue guarantees to the transferring attorney.

### 10.4 From a pre-sale

If the purchaser is using the proceeds from the sale of his/her property, the transferring attorney will request guarantees from the attorney attending to the registration of such a pre-sale.

## 11 Roles of the different attorneys

Various conveyancing firms can be involved in a typical property transaction, depending on the nature of the transaction and the required actions in the deeds office. Several different attorneys or a single legal firm can handle these actions. It is obviously much faster and convenient for the parties if only one law firm deals with all aspects of the transaction. In order to handle all aspects of a sales transaction, the transferring attorney needs to be on both the bond registration and bond cancellation panels of the relevant bank.



***The different legal role players are:***

### 11.1 The Transferring attorney

The transferring attorney is the conveyancer responsible for the transfer of the property into the purchaser's name and is usually appointed by the seller.

The transferring attorney's responsibilities are wide-ranging and include:

- Ensuring that the parties comply with the terms of the sale agreement and, if not, that the necessary steps are taken to enforce the terms;



- Drafting all the legal documents and overseeing the signature thereof;
- Obtaining the transfer duty receipt/exemption from SARS as well as the clearance certificates from the Ekurhuleni Metropolitan Municipality and relevant Midstream Estate 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 these documents at the deeds office once they are satisfied that all legal and contractual requirements have been met;
- Ensuring that the relevant Certificates of Compliance (COC's) are in place (e.g. the electrical and gas certificates).



***The parties must ensure that they appoint a respected and independent conveyancing practice to deal with the transaction. Be wary of conveyancers with a conflict of interest, especially where the conveyancers are also acting as estate agents in the transaction.***



***M.C. van der Berg Inc. will gladly oversee your property transfer.***

## 11.2 The bond registration attorney

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

Some banks will allow the purchaser to nominate the attorney who should attend to the registration of the purchaser's bond. (Such attorneys must be on the bond registration panel of the bank involved).



***If a purchaser prefers that M.C. van der Berg Inc. oversees the bond registration, he/she must give an instruction to their personal banker or bond originator to ensure that they appoint us as the bond registration attorney.***



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

## 11.3 The bond cancellation attorney

The bond cancellation attorney is the conveyancer who oversees the cancellation of the seller's bond (if applicable). The attorney firm attending to the cancellation on behalf of the seller's bank must be on that specific bank's bond cancellation panel.



***M.C. van der Berg Inc. serves on the bond cancellation panels of Absa, FNB, Nedbank and Standard Bank. If we are appointed to oversee the transfer of the property, we shall apply for the cancellation figures from the seller's bank and subsequently attend to the cancellation of the existing bond.***

## 12 Costs



***For a detailed breakdown and explanation of the costs payable by the purchaser, please use the 'MCostCalculator' on our website: [www.mcvdberg.co.za](http://www.mcvdberg.co.za).***

## 12.1 For the purchaser's account

### 12.1.1 Transfer costs

The term **'transfer costs'** refers to the costs involved in transferring the property from the seller to the purchaser. This cost component may include transfer duty, the transferring attorney's professional fees as well as other administrative charges, disbursements and expenses plus VAT.

The attorney's professional fee is linked to the value of the property. We adhere to the Legal Practice Council of South Africa's (LPC) guidelines relating to fair and reasonable fees.

### 12.1.2 Bond registration costs

The term **'bond registration costs'** refers to the cost payable for registration of the purchaser's bond (if applicable). The cost component includes the professional fees of the bond registration attorney as well as other administrative charges, disbursements and expenses plus VAT.

The attorney's professional fee is linked to the bond amount being registered. In this regard, we adhere to the Legal Practice Council of South Africa's (LPC) guidelines relating to fair and reasonable fees.

## 12.2 For the seller's account

### 12.2.1 Bond cancellation costs

The seller will be responsible for the bond cancellation attorney's costs (if applicable). We deduct the cancellation costs from the proceeds and the seller does not need to pay us in advance.

### 12.2.2 Other costs



***The seller may also be liable for other expenses. Examples of these include electrical- and gas compliance certificates and the costs involved in obtaining clearance certificates from the Ekurhuleni Metropolitan Municipality and the relevant Midstream Estates HOA and body corporate (if applicable).***

## 13 CPA – Consumer Protection Act



***The CPA is not necessarily applicable to your property transaction!***

The primary objective of the CPA is to protect consumers. However, it does not regulate all transactions and business relationships. Purchasers and sellers are often given the false impression that the CPA is applicable to their property transaction. Before accepting an offer, sellers must be informed about their responsibilities pertaining to defects and guarantees. Purchasers must also not merely accept that they are protected in terms of the CPA regarding defects.

## 14 Patent and latent defects



***Defects to the property are the most common reason for discontent. This often results in litigation, mainly because parties are misinformed about the legal position regarding defects.***

**‘Patent defects’** to a property are those defects that can be seen with the naked eye or can be ascertained by conducting a reasonable inspection of the property. This can include broken windows, damp, deficient electrical appliances and even the incorrect zoning and non-approved plans of the property.



***The purchaser has a legal obligation to conduct a thorough inspection of the property before making an offer to establish the patent defects.*** If the purchaser neglects to attend to the required inspection, it is presumed that he/she is aware of all the patent defects and that he/she is satisfied to purchase the property in that condition.

Neither the seller nor the agent has any obligation to inspect the property on behalf of the purchaser or to disclose any patent defects. If the purchaser is not satisfied, the defects must be addressed in the offer to purchase.

**‘Latent defects’** to the property are those defects that cannot be seen with the naked eye or ascertained by conducting a reasonable inspection of the property.



***If the property is offered and sold in the condition as it stands (‘voetstoots’), it means that the seller does not guarantee the absence of latent defects.*** The purchaser will then bear the risk and costs of repairing the latent defects unless the purchaser can prove the seller had prior knowledge of the latent defects and fraudulently omitted to disclose it prior to conclusion of the agreement.

In the spirit of the CPA, most estate agencies require sellers to complete a so-called ‘property report’. Although it is not legally compulsory, it is highly recommended that the seller completes the report. Sellers and purchasers should examine the report to ensure they understand the scope of its contents. Sellers shouldn’t be wary of providing a property report. If this document is drafted correctly, it protects both the seller and the purchaser as it informs every one of their responsibilities and liabilities relating to latent and patent defects.



***Purchasers should obtain and study the property condition report at their first viewing of the property. Sellers should obtain the pro forma property condition report from the estate agent when the property is listed. After examining it carefully, they should obtain legal advice to ensure that it is correctly drafted and that they understand the scope before completing and signing the report.***

Purchasers are also entitled to appoint a house inspector or professional person at their own expense to carry out the inspection on their behalf.

Inspecting the property, whether it is conducted by the purchaser or a professional, should be done before the purchaser and seller sign the offer. Remember that the purchaser will not be able to insist that the seller must repair any defects if no such obligation is included in the agreement of sale. The purchaser will also not be able to insist on a reduction of the purchase price because of defects he/she noticed after signing the agreement of sale.

## 15 Restrictive title condition in favour of Bondev

When establishing a township, a restrictive condition in the form of a reversionary right is incorporated into the title deed of all properties in the greater Midstream Estates. This condition stipulates that Bondev Midrand Pty Ltd (the developer of Midstream) is entitled to claim re-transfer of the property if a dwelling is not erected on the vacant stand within 12–18 months (this time period differs from estate to estate and extension to extension,) from the first transfer of that stand. It can be extended on application and in the sole discretion of Bondev.

Developers incorporate such a clause as a title condition to ensure prompt development of dwellings in a new township.

This reversionary right affects the transfer of the property as follows:

- **Transfer of a vacant stand**

A vacant stand cannot be transferred without Bondev's prior written consent. Bondev issues this consent after it receives an application by the transferring attorney, with the seller incurring these costs.

If a purchaser buys a vacant stand, it is essential to establish how this revisionary right will affect him/her especially whether there is sufficient time available to complete the dwelling. There are also additional costs that may be incurred such as double levies as well as Rates and Taxes, which are higher for vacant stands.

- **First transfer of a developed (built) erf**

Once an erf is developed, Bondev must still consent to the first transfer of the property. In addition, Bondev will issue a written consent indicating that the condition has been met and that the title condition may be removed.

We shall apply to Bondev for its consent to remove the reversionary condition from the deed on the seller's behalf, at the seller's cost.

- **Subsequent transfers of a developed erf**

Once the restrictive reversionary condition is removed from the title deed after the first transfer, the property can be transferred freely and without Bondev's consent.

## 16 Building plans and pre-sale inspection

Although as-built approved building plans are currently not a statutory requirement for registration, the various HOA's will not consent to the transfer of the property if the plans are not up to date and are an exact representation of the property. It is thus advisable to obtain approved building plans timeously.

As part of its clearance certificate process, the relevant HOA conducts a pre-sale inspection to ensure that the building plans reflect the structures and improvements on the property before it gives consent for registration. If a property owner has made structural alterations to the property, built garden walls, erected a Wendy house (only allowed in certain estates), carport and even built a swimming pool it will be required that the building plans are amended accordingly and the relevant HOA approves them before consent for registration will be given. Prospective purchasers must however, take note that this pre-sale inspection requirement only entails approval of the as-built



plans by the HOA and not the EMM. ***Purchasers can thus not assume that the EMM has formally approved the building plans when transfer takes place.***

Sellers must also be aware that if EMM does not approve the as-built building plans, this may become a stumbling block in the registration process if the purchaser or the purchaser's bank requires the approved as-built plans. Our advice is to attend to this matter long before you even decide to sell the property.



***Remember that your transaction will be delayed if you are required to obtain approved building plans at a late stage!***

## 17 City council accounts – Ekurhuleni Metropolitan Municipality (EMM)

A property cannot be transferred at the deeds office without proof (known as a clearance certificate) that the rates and taxes and utilities due to the EMM are paid up in advance.

The transferring attorney applies for the clearance figure, which includes all rates and taxes and charges for utilities (water, refuse removal and sewerage) in arrears, as well as an estimated advance payment thereof for four months. (This does not include electricity as this is paid to MES).

The transferring attorney will request payment of this amount from the seller (discussed hereunder under refund) and make payment to the EMM, after which a clearance certificate is issued.

### 17.1 Closing of the Rates and taxes– and utility accounts by the seller

The seller must close the EMM rates and taxes– and utility accounts after transfer. Closing these accounts can be a tedious and frustrating process. As an alternative to closing the accounts, EMM can be requested to journalise credit balances to another municipal account of the seller in the EMM's jurisdiction.

The EMM will only close these accounts after the property is registered. In this regard, the EMM requires written confirmation from the transferring attorney, together with official confirmation from the deeds office (a deed search) that the property has indeed been transferred to the purchaser. The deeds office takes approximately two to three weeks after registration before it updates its systems and can provide a new deed search, which reflects that transfer has taken place.

Once M.C. van der Berg Inc. is able to obtain the new deed search, we shall deliver the deed search and confirmation letter to the EMM by hand and obtain an acknowledgement of receipt. Thereafter, we shall furnish the seller with a copy of the confirmation letter, the deed search and the acknowledgement of receipt from the EMM via email.

The aforementioned notification to the EMM initiates the process for payment of the refund due to the seller, which consists of:

- i. The initial deposit;
- ii. The possible double payment to the EMM for the period of the clearance figures;
- iii. The apportioned estimated advance payment by the seller for any period after registration.

The refund process can take up to six months if the seller does not appoint a consultant at his/her cost to expedite the payment thereof.



***M.C. van der Berg Inc. provides this service free of charge to our Midstream clients to ensure a hassle-free transaction.***

## 17.2 Opening the Municipal account

The EMM only allows a new rates and taxes- and utility account (water, sewerage and refuse removal) to be opened once registration takes place.

To open the 'rates and taxes' and the 'utility' accounts in the purchaser's name, the EMM requires confirmation from the transferring attorney, together with official confirmation from the deeds office (deed search) that the transfer has been effected. The deeds office takes approximately two to three weeks after registration before it updates its systems and can provide a new deed search reflecting that transfer has taken place.

Once we are able to obtain the new deed search, we deliver the deed search and confirmation letter to the EMM by hand and obtain an acknowledgement of receipt. We then furnish the purchaser with a copy of the confirmation letter, the deed search and the acknowledgement of receipt from the EMM via email. The EMM requires the following documents:

- i. A copy of the email confirming the registration and deed search;
- ii. The EMM application form (that we provide to the purchaser) and
- iii. A copy of the new owner's identity document(s).

The EMM does not require the payment of a deposit as it will add this amount to the new account.

The EMM will then be able to open the rates and taxes- and utility accounts in the purchaser's name. This process can take up to six months in practice. We recommend that you put money aside every month in order to anticipate this charge.

The purchaser is therefore obliged to either visit the EMM him/herself or appoint a consultant at his/her cost to handle the opening of these accounts.



***M.C. van der Berg Inc. provides this service free of charge to our Midstream clients to ensure a hassle-free transaction.***

## 18 Homeowners' association (HOA) – clearance



***All properties in the Midstream group of estates fall under the control of a particular HOA and subsequently a monthly levy is due and payable to that HOA.***

As with the EMM account, a property cannot be transferred without the consent of the relevant HOA. The transferring attorney applies to the HOA to issue the levy clearance figures. This includes the levies in arrears and an advance payment for levies for three months as well as an advance amount for MES (electricity usage) (see Clause 20).

The HOA will only issue these figures once they have received the following:

- i. Initial application form for levy clearance figures from the transferring attorneys;
- ii. Information sheet completed by the seller and the purchaser (we shall email both these documents to the respective parties for completion).

The HOA will issue the levy clearance certificate and the consent to transfer once:

- i. Payment of the levy clearance figures is made, and
- ii. The original signed and completed application form for membership (which the purchaser will sign at our offices) is delivered to the HOA, and
- iii. The pre-sale inspection (PSI) for building plans is completed (see clause 16).

The seller remains liable for the levies up to registration, while the purchaser becomes liable for payment of the levies from registration. We shall request payment of this disbursement from both parties, namely, from the purchaser in the initial statement of account and from the seller once we receive the clearance figure to ensure that the arrears levies are covered. If applicable, we shall also apportion and reimburse the seller on registration. The balance of the advance levy paid will be credited to the purchaser's HOA levy account on registration.

## 19 Sectional title body corporate – clearance



***If the relevant property is a sectional title unit, a monthly levy (in addition to the HOA levy) is due and payable.***

The property cannot be transferred without the consent of the relevant sectional title body corporate (in addition to the EMM and HOA clearances). The transferring attorney applies to the body corporate to issue the clearance figures, which includes the levies in arrears and an advance payment for levies for three months.

After the levy clearance figure is paid on behalf of the seller to the body corporate, a clearance certificate is issued.

The seller remains liable for these levies up to registration and the purchaser becomes liable for levies from registration. We shall request payment of this disbursement from both parties; namely from the purchaser in the initial statement of account and from the seller once we receive the levy clearance figure (to ensure that the levies in arrears are covered). We apportion and reimburse the seller (if applicable) on registration. The balance of the advance levy paid will be credited to the purchaser's levy account on registration.

To read more about the functioning of sectional title schemes and in particular body corporate rules and levies, kindly read our *MCSectionalTitleGuide* on our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za).

## 20 Midstream Electrical Supplies (MES)

Since Midstream Electrical Supplies (MES) (not Ekurhuleni Metropolitan Municipality) supplies electricity in Midstream Estates, the MES account has to be settled.

### **Seller:**

The levy clearance figures that the HOA issues to the transferring attorney will include an estimated advance payment to MES. This amount will be charged to the seller. Once the transferring attorney confirms registration of the property, MES will do an apportionment up to termination of the service and reimburse the seller.

After confirmation of registration, the seller needs to complete and forward the 'Termination of Supply of Electricity' form to [mes@midstream.co.za](mailto:mes@midstream.co.za). This document can be found on the website at [www.midstream.co.za/MES](http://www.midstream.co.za/MES).

It is, however, possible to terminate this service when the purchaser takes occupation of the property if the occupation date is prior to the registration date.



***On request, M.C. van der Berg Inc. will attend to this process on behalf of the seller free of charge.***

#### **Purchaser:**

Upon registration or occupation (whichever is earlier), the purchaser needs to open a MES account. This entails completing the relevant application form and submitting the following documents to [mes@midstream.co.za](mailto:mes@midstream.co.za):

- i. The 'Contract for the Supply of Electricity' application form which can be obtained from the Midstream website at [www.midstream.co.za/MES](http://www.midstream.co.za/MES). Note that there are different contracts for full title properties and sectional title properties, Retire@Midstream and the apartments in Ascend to Midstream;
- ii. A copy of the identity documents of both the purchaser and his/her spouse/partner;
- iii. A letter from the transferring attorneys confirming registration or earlier occupation, and
- iv. A deposit and admin fee as required by MES, which the purchaser needs to pay immediately. If not, this amount will be added to the purchaser's first account.



***On request, M.C. van der Berg Inc. will attend to this process on behalf of the purchaser free of charge.***

## 21 Insurance

The owner is responsible for the short-term insurance of the property. Do not, therefore, cancel your short-term insurance before registration as the property will then not be insured against damages arising in the period from cancellation of the insurance to the registration of the property.

## 22 South African Revenue Service (SARS)



***A property transaction cannot be processed unless both parties have income tax numbers. If either party does not have one, he/she must take immediate steps to obtain it from SARS.***

SARS carries out a risk analysis on both the purchaser and the seller before issuing the transfer duty receipt/exemption. All tax-related matters (whether private or otherwise), including but not limited to tax returns and payments, should therefore be up to date as failure will delay the transaction. If this is not the case, you should do so immediately.

## 23 Tax-related matters

### 23.1 Value Added Tax (VAT)

VAT is only payable on the purchase price if the seller is a property trading enterprise registered for VAT and the property sold is a supply in terms of the VAT Act. Only developers and speculators are usually liable to pay VAT. Midstream is an evolving estate and many of the transactions



concluded are indeed VAT transactions. Sellers should contact their auditors if they are uncertain about whether they are liable to pay VAT. If it is a VAT transaction, it must be clear whether the purchase price includes VAT or not.

### 23.2 Transfer duty

If the transaction does not attract VAT, the purchaser may be liable to pay transfer duty. The transferring attorney collects the transfer duty from the purchaser and pays it to SARS.

### 23.3 Capital Gains Tax (CGT)


CGT may be payable by the seller as a result of the transfer of the property. CGT is payable at the end of the tax year together with income tax. Unlike transfer duty or rates and taxes, we do not administer or pay CGT to SARS. Purchasers will eventually become sellers and they should keep CGT in mind as they may inevitably also become liable for CGT when they dispose of the property in future. Getting sound advice regarding CGT and the entity the property is bought into is therefore crucial before making an offer to purchase.


 ***The purchaser and seller are welcome to contact us for advice in this regard.***

## 24 Compliance certificates (COC's)

The Occupational Health and Safety Act requires the seller to provide the purchaser (or the transferring attorney) with certain compliance certificates before occupation or registration, whichever is the earliest.


The cost of these COC's, together with any repair work is for the seller's account.

 ***The scope of the COC's is limited as it merely certifies that the relevant installation is safe. It does not certify that the relevant appliances are in working condition. The COC does not cover any appliances.***

 ***However, a condition can be inserted into the offer requesting that the seller guarantees that the installation and appliances are in working order.***

### 24.1 Electrical certificate of compliance

The electrical certificate of compliance certifies that the electrical installation is safe and complies with SABS standards. Although the certificate makes no reference to the working order of the installation or to any appliances such as stoves and geysers, the specific clause relating to the electrical compliance certificate in the agreement of sale may require that the installation and appliances are indeed in a working order. In such cases, the seller would be obliged to attend to this. If the seller is already in possession of an electrical certificate of compliance, it may not be older than two years on date of registration of the property. If any alterations or additions were made to the electrical installation after the certificate was issued, it becomes void and a new certificate will have to be obtained.

 ***Repairs may be necessary before the electrical compliance certificate can be issued (especially with older houses). To avoid any delay in the transaction we suggest that the seller obtains the electrical compliance certificate as soon as he/she decides to market the property.*** The purchaser's bank will also require a copy of the electrical compliance certificate before it gives permission to lodge the documents at the deeds office.



***At the request of the seller, we shall contact the electricians at MES to assist with the electrical compliance certificate.*** The cost of this certificate and any costs pertaining to repairs will be for the seller's account.

#### 24.2 Electric fence compliance certificate

There are no electric fences in Midstream except those on the perimeter wall. Since this electric fence is connected to the relevant HOA's property, sellers are not required to provide this certificate when selling properties in Midstream.

#### 24.3 Gas certificate

The Occupational Health and Safety Act requires that if the property is equipped with a gas installation, the seller must provide the purchaser (or transferring attorney) with a gas compliance certificate before date of occupation or registration, whichever is earlier. This certificate must certify that the gas installation is safe and complies with the relevant SABS standards.



***Repairs may be necessary before the gas certificate can be issued (especially with older houses). To avoid any delay in the transaction we suggest that the seller obtains the gas compliance certificate as soon as he/she decides to market the property.***

The company that did the gas installation can issue the gas certificate. Alternatively, the seller can contact any gas equipment installer in Midstream.

The cost of the gas compliance certificate and any costs pertaining to the repair of the gas installation will be for the seller's account.

### 25 Property Professionals (Estate agents) in Midstream

Midstream Estates requires that property professionals operating in the estate are properly qualified. They also need to be accredited with the Estate Agency Affairs Board (EAAB) and in the estate itself. All these property professionals are required to write an exam before they receive accreditation to operate in the estate. This ensures that they understand the rules and functioning of the estates. It is imperative that a seller only mandates property professionals who are accredited in Midstream, as the relevant HOA will not issue the clearance figures if the property professional is not accredited as such.

Information sessions by Bondev about future developments and legal training by MCademy (the in-house training facility of M.C. van der Berg Inc. ensure that property professionals in Midstream are knowledgeable and informed. The various estates monitor the conduct of the property professionals to ensure they operate ethically and professionally. Unethical behaviour can be reported by emailing [gertvv@midstream.co.za](mailto:gertvv@midstream.co.za) or by calling (012) 661 0456.

### 26 Mandates

Sellers often incorrectly believe that an estate agent's claims for commission arise from the agreement of sale. Legally, it actually emanates from the common law principles of a contract of mandate (in other words, the seller's instruction to sell the property).



***This contract of mandate will usually be contained partly or fully in the mandate agreement, which the seller signs when he/she appoints an estate agent to market and sell the property.***

According to common-law principles, there are no formal requirements for a contract of mandate, and therefore a seller may verbally grant a mandate to an estate agent. It is obviously bad business practice to enter into verbal agreements as this may present evidentiary problems for both the agent and the seller in proving the existence and ambit of the mandate.

The common-law principles discussed above have been amended in the Code of Conduct of Estate Agents by stipulating that a sole mandate and an exclusive mandate (see below) must be in writing and must be signed by the seller.

In practice, there are four types of mandates. For the purposes of this document we shall not discuss the advantages and disadvantages of the various types of mandates since they are not relevant.

#### 26.1 Open mandate

In the case of an open mandate, the seller authorises several agencies to market the property. The agent that is the effective cause of the sale will be entitled to commission. The seller may also sell the property himself.

#### 26.2 Dual mandate

In this case, the seller authorises a limited number of agencies (two or three) to sell the property. The agency that is the effective cause of the transaction will be entitled to commission. The seller may, in this case, also sell the property himself.

#### 26.3 Sole mandate

In the case of a sole mandate, the relevant agency and the seller agree that the agency has the right to market the property to the exclusion of all other agencies. Due to the restrictive nature of a sole mandate, it is usually only granted for a limited period. If another agency sells the property during this period, the seller will still remain liable for paying commission to the sole mandatory.

The right to sell a property is an inherent right of a seller, which means that South African courts have not interpreted a sole mandate as a limitation of this right. Therefore, a seller who has granted a sole mandate may sell the property himself.

#### 26.4 Exclusive mandate

This type of mandate dictates that the relevant agency will exclusively sell the property within the period allowed. In this case, the seller renounces the right to sell the property himself during the exclusive mandate period.

Finally, it should be kept in mind that the EAAB Code of Conduct for Estate Agents contains additional requirements. Aside from the requirement that sole (and exclusive) mandates should be in writing and signed, the mandate should also include a marketing plan.

The Consumer Protection Act also affects the relationship between agent and seller; the various mandates need to comply with the Act. For example, the Act requires that the mandate should be drafted in plain language and draws the parties' attention to any specific high-risk condition.

It is always advisable for the seller to have the mandate scrutinised as it regulates the legal relationship between the seller and the agent.

## 27 Commission – liability

Today's estate agents are well-qualified property professionals, so it's not surprising that sellers and buyers expect them to provide effective and professional service. Bear in mind that the commission is their incentive and reward for their professional services.



***Commission has given rise to many legal disputes between agencies and buyers.***

***Please note the following:***

### 27.1 Introduction to the property

It may occur that more than one agent introduces a specific purchaser to a property. If a second or further agent introduces a purchaser to a property which he/she has already viewed through another agency, it must be revealed (preferably by email for record purposes) to both agencies.

### 27.2 Private sale – commission claim

Under no circumstances should a purchaser approach a seller directly with an offer if an agent has introduced him/her to the property. It is also not advisable to make use of friends, family or business partners to make the offer on the purchaser's behalf. If the agency later learns of the direct offer, they can claim the commission from the seller and/or purchaser in certain circumstances.

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

### 28.1 FICA

'FICA' is an acronym for the 'Financial Intelligence Centres Act'. You will often hear the term FICA being used by various people, including ourselves, the agent, bond originator, bank and the bond registration attorney.

The FIC Act compels nominated people and institutions involved in your transaction to verify certain information and keep record thereof. Regardless of how frustrating this may be, you must accept that all role players will require that you provide them with certain documents.

FICA also requires attorneys to report any suspicious transactions, for example, when large amounts of cash change hands. We are required to report any transaction that involves more than R25 000 cash to the FIC (Financial Intelligence Centre).

### 28.2 POPI

'POPI' is an acronym for the 'Protection of Personal Information Act'. In terms of this Act, personal information (for example your identity number, contact details, email address etc.), may only be utilised for the purpose it was obtained for and may not be divulged to third parties. Rest assured that we are fully compliant with the POPI Act, which means we shall only process your information for transfer, bond cancellation and/or bond related purposes.

## 29 How prospective sellers and purchasers can help



***How can sellers and purchasers ensure that the transaction runs smoothly?***

### **As the Seller you can:**

1. Obtain the agency's *pro forma* agreement and the property report before accepting an offer. You can then study these documents before coming to discuss your transaction with us;
2. Make sure you have a tax number and that your tax affairs are in order;
3. Contact us so that we can assist you with notification of pending cancellation of the bond;
4. Have copies of your building plans and occupation certificate handy;
5. Make sure you have an original identity document and proof of physical address not older than three months for FICA purposes;
6. Arrange/attend to the PSI (pre-sale inspection) by the HOA as soon as possible.

### **As the Purchaser you can:**

1. Establish whether the Consumer Protection Act is applicable to your transaction;
2. Contact your bank or a bond originator to determine the loan amount for which you will qualify;
3. Calculate your transfer costs and bond registration costs before making an offer using our 'MCostcalculator' at [www.mcvdberg.co.za](http://www.mcvdberg.co.za);
4. Obtain the rules of the sectional title body corporate and/or HOA beforehand and peruse them;
5. Have a tax number handy and get your tax affairs in order;
6. Make sure you have an original identity document and proof of physical address not older than three months for FICA purposes;
7. Request your bank or the bond originator to appoint M.C. van der Berg Inc. as your bond registration attorney.

## 30 Message from the Directors

The directors of M.C. van der Berg Inc. trust that this *MCMidstreamGuide* will provide you, our valued client, with useful advice and essential information.

We furthermore trust that together with this information, our professionalism, effectiveness and expertise will result in a trouble-free, enjoyable and exceptional business experience.



***We invite you to put your trust in M.C. van der Berg Inc. You are welcome to contact us if you have any queries or visit us at our Midstream office at G1 Ashford House, 7 Ashford Road, Midstream Estate.***



***Visit our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za) or contact us on 012 660 6000 or email [info@mcvdberg.co.za](mailto:info@mcvdberg.co.za).***

The MC team looks forward to meeting you over the best cup of coffee in town!

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

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