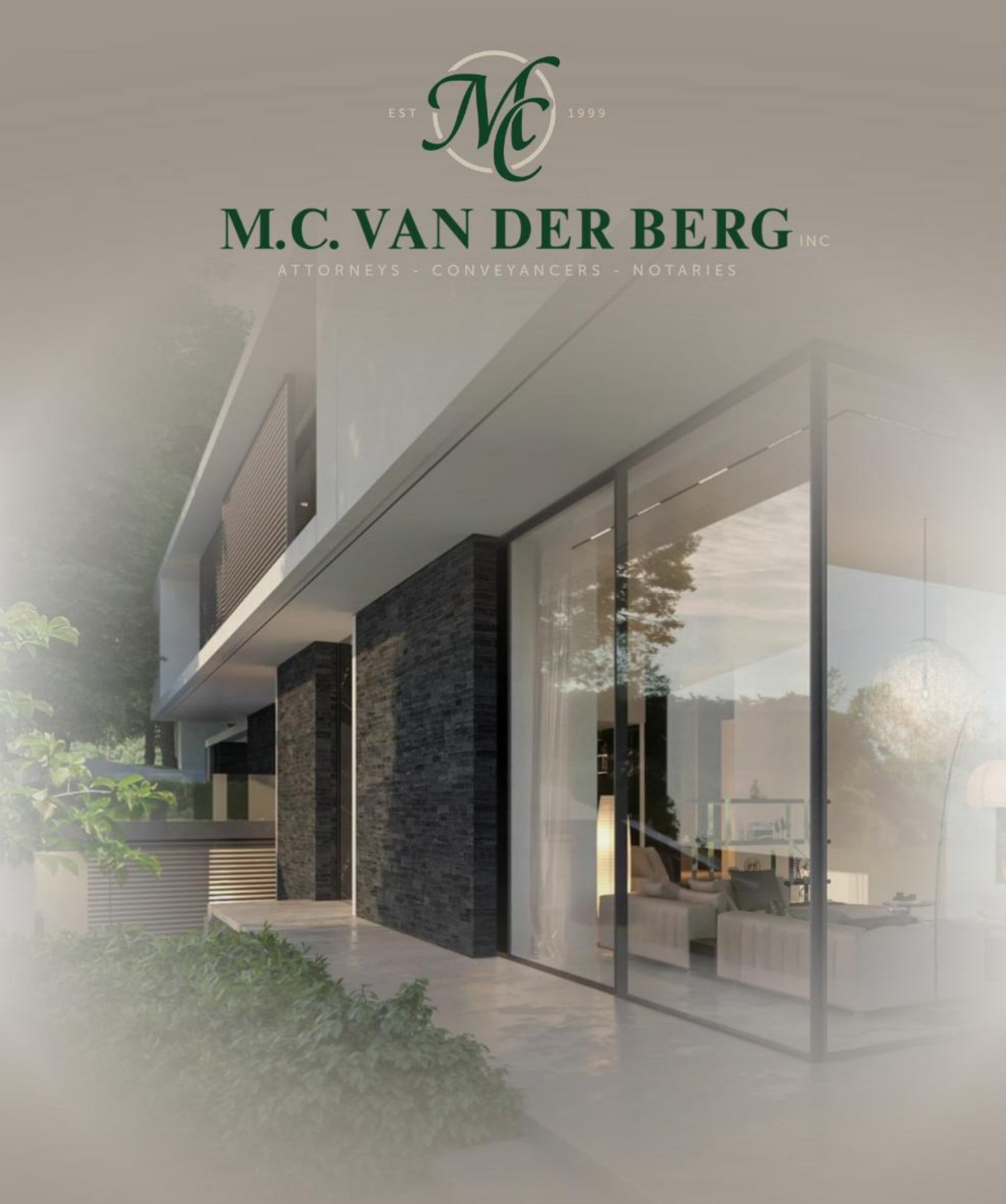
EST 1999

M.C. VAN DER BERG INC

ATTORNEYS - CONVEYANCERS - NOTARIES



QUICK GUIDE

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Legal indemnity - M.C. van der Berg Inc. has compiled this *MCQuickGuide* in an attempt to provide general legal advice regarding the sale of property. It must not be construed as being specific advice applicable to your transaction. Furthermore, it does not bind us, the banks or any other party. Changes in legislation, procedures and processes are frequent and readers are advised to contact us to ensure they obtain advice that is correct and up-to-date.

1. Introduction

If you have just sold or purchased a property, congratulations! We know from experience that you probably have many questions. Selling or buying a property involves more than just a transaction with monetary or investment value; it often represents memories from the past or your dreams for the future.

In the process of transferring a property (registration), you may already know about all the possible obstacles as well as legal requirements. However, if you are purchasing a property for the first time or it's been a few years since you were involved in a property transfer this informative *MCQuickGuide* is here to make things easier for you.

The *MCQuickGuide* is aimed at giving you, our valued client, a simple, yet thorough explanation of the most common terms, processes, legislation and time frames involved in a property transaction. We hope it will help to change a potentially stressful experience into a pleasant one.

☞ ***Since we realise you are probably busy, we have highlighted certain aspects that will require your immediate attention once the transfer process starts. We recommend you pay special attention to all the aspects marked with*** ☞

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 offices at Midstream, Pretoria East and Pretoria North. 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, 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.***

☞ ***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.***

3. Your purchase agreement – where it all starts

Once a seller accepts the offer a purchaser has made, it becomes the purchase agreement (deed of sale). The instruction to transfer a property from a seller to a purchaser originates from the purchase agreement. You sign this document in your capacity as a seller or purchaser, and thereafter hand it to us to process further.

Point A on the flowchart depicts the receipt of the offer to purchase (see 28).

Together with specific legislation, the purchase agreement forms the framework of rules within which the property must be transferred. Our task is to handle the purchase agreement and we may not deviate from it. It's important to be mindful of the following key elements relating to the purchase agreement.

Entire agreement – A purchase agreement usually contains a clause stating that it constitutes the only and the entire purchase agreement/agreement between the purchaser and seller. ***This means that any condition the parties agree on that is not included in the purchase agreement will not form part of the actual sales agreement. This will mean that M.C. van der Berg Inc. cannot ensure that those conditions are enforceable.***

Non-variation – In most cases, your purchase agreement will also contain a so-called 'non-variation clause'. ***This clause means that no amendments to the purchase agreement will be valid unless they are in writing and both the purchaser and seller sign it.*** Never give or accept a verbal amendment or undertaking as they will not be enforceable. Contact your estate agent or our office immediately to prepare the necessary addendum and arrange for both parties to sign it.

Suspensive Conditions – ***When a purchase agreement is subject to suspensive conditions – for example, where a purchaser has to obtain bond approval or first sell his/her property – it means that these conditions have to be fulfilled timeously before the sale can proceed.*** There is not much we can do until the suspensive conditions have been met. In the interim, we shall open a file, handle some administrative issues and monitor progress in the fulfilment of the suspensive conditions. During this time, we request your patience in not being able to provide much feedback until the suspensive conditions have been met.

The party (normally the purchaser) that assumes responsibility for handling the suspensive conditions has to ensure they are fulfilled timeously and precisely. For example, if your bond is approved for a lesser amount or later than the stipulated date, it will jeopardise the transaction because the suspensive conditions have not been met precisely. If you are concerned about possible issues related to fulfilling a suspensive condition in your purchase agreement, contact your estate agent or our office before the due date. This will help us to prepare the necessary addendum so you can sign it and prevent unnecessary delays.

4. The role of the team members at M.C. van der Berg Incorporated

When you appoint M.C. van der Berg Inc. to handle your transaction, you will deal with a '*conveyancer*' and a '*conveyancing secretary*'.

A *conveyancer* is an admitted attorney who has a further qualification in property law. He/she is responsible for ensuring that all documentation is correctly drafted, the correct procedures are followed and that all funds are paid out correctly.

A *conveyancing secretary* has the experience and competence to handle the day-to-day administration of your property transfer as well as the bond cancellation and bond registration processes. At the start of the transaction, she will be your main contact. She will handle much of the correspondence and be able to answer most of your questions. However, if you wish you discuss any matter or

need legal advice, please feel free to contact the *conveyancer* handling your transfer or bond registration directly at any time.

The covering letter we sent to you at the start of your transaction specifies the name of the conveyancer and the conveyancing secretary dealing with your transaction.

If you are dissatisfied with the level of service from either the *conveyancer* or the *conveyancing secretary* you are welcome to contact one of our directors at M.C. van der Berg Inc. directly, namely Sonja du Toit, Tiaan van der Berg, Nicole Alberts or Ramona Michael.

5. Transfer, bond registration and bond cancellation

In a typical transaction involving a property transfer, there are usually three registration actions that take place simultaneously in the deeds office. These are the transfer, registration of a purchaser's bond and cancellation of a seller's bond.

To confuse matters even further, different terms and names are used for the attorney firms that handle the various registration actions. In some cases, one, two or even three different attorney firms may handle the various registration actions, depending on the preferences of clients and banks.

The different attorneys in these three registration actions play the following roles:

5.1 Transferring attorney

This attorney firm handles the transfer of a property from a seller to a purchaser. In your transaction it will be M.C. van der Berg Inc. This MCQuickGuide mostly deals with the role that transferring attorneys play in the transaction.

5.2 Bond registration attorney

This attorney firm handles the simultaneous registration of a purchaser's bond. Bond registration attorneys have to be on the specific bank's home loan registration panel where the purchaser has applied for a bond.

Not all attorney firms are on the banks' registration panels. ***M.C. van der Berg Inc. is on the home loan registration panel of ABSA, Nedbank, FNB, Standard Bank, SA Home Loans and HIP (Housing Investment Partners).***

It may therefore happen that M.C. van der Berg Inc. will attend to both the transfer of the property as well as the registration of the purchaser's bond. It will obviously facilitate the process if we are appointed as both the transferring and the bond registration attorney.

Some banks will allow the purchaser to indicate which panel attorney he/she prefers to attend to the bond registration. The purchaser's instruction in this regard must be given to his personal banker or bond originator.

5.3 Bond cancellation attorney

This attorney firm handles the cancellation of the seller's bond. The seller's bank will appoint the bond cancellation attorney.

If the transferring attorney also serves on the cancellation panel of the relevant bank it is likely that he/she will also handle the cancellation of the seller's bond.

☞ Not all attorney firms serve on bond cancellation panels of the various banks. ***M.C. van der Berg Inc. serves on the bond cancellation panels of ABSA, Nedbank, Standard Bank and FNB.*** It will obviously expedite the process if we also handle the cancellation.

6. Costs

☞ ***As mentioned earlier, a typical property transaction involves three registration actions that usually occur simultaneously in the deeds office. The three respective attorney firms – namely the transferring attorney (see 5.1), the bond registration attorney (see 5.2) and the bond cancellation attorney (see 5.3) – are each entitled to a professional fee. Aside from this professional fee, other disbursements are also payable.***

☞ ***A purchaser is liable for all costs relating to the transfer of a property (see 0.1) as well as the registration of the bond (see 0) (if applicable).*** Irrespective of whether the same attorney firm or different ones handle the transfer and bond registration, costs and disbursements will be charged separately.

☞ ***Use our handy 'MCostCalculator' on our website at www.mcvdberg.co.za to calculate the estimated costs and disbursements you will need to pay.*** The calculator, together with the accompanying notes on the website, should answer most of your questions. If you require a detailed quotation, please ask your conveyancing secretary at our firm for assistance.

☞ ***A seller is liable for the costs relating to the cancellation of his/her bond (see 0) (if applicable).***

6.1 Transfer costs

☞ ***A purchaser has to pay all fees and disbursements mentioned in this category.***

The term *'transfer costs'* refers to costs applicable when a property is transferred from a seller to a purchaser. These costs include transfer duty (see 15), the transferring attorney's professional fee and certain disbursements (e.g. document generation costs, deeds office levy, post & petties, FICA etc.). The professional fee is based on the value of the property. We follow the guidelines of reasonable fees as stipulated by the Legal Practice Council of South Africa (LPC).

6.2 Bond registration costs

☞ ***A purchaser has to pay all fees and disbursements mentioned in this category.***

The term *'bond registration costs'* refers to costs that apply when registering a purchaser's bond (if applicable). These costs include the bond registration attorney's professional fee and certain disbursements (e.g. document generation, deeds office levy, post & petties, FICA etc.). The professional fee is based on the bond amount to be registered. We follow the guidelines of reasonable fees as stipulated by the Legal Practice Council of South Africa (LPC).

☞ The bond registration attorney also collects an 'initiation fee' on behalf of the bank. Banks charge this administrative fee and the amount may vary from one financial institution to another. ***When a purchaser applies for a home loan, he/she may choose to pay the initiation fee upfront or include it in the loan amount, thereby financing it over the term of the loan.*** A purchaser who wishes to include the initiation fee in the loan amount must inform his/her bond originator or personal banker accordingly.

6.3 Bond cancellation costs

The seller pays all fees and disbursements mentioned in this category.

The term *'bond cancellation costs'* refers to costs that apply when a seller's bond is cancelled (if applicable). We follow the guidelines of reasonable fees as stipulated by the Legal Practice Council of South Africa (LPC).

It is common practice to deduct the cancellation costs from a seller's proceeds if the same attorney firm handles both the bond cancellation and property transfer. If different firms handle these transactions, the cancellation attorney will usually request the transferring attorney to pay the cancellation fees before registration.

If there is insufficient proceeds to pay the cancellation costs or the cancellation attorney requires payment before registration, the transferring attorney will request the seller to pay the cancellation costs to enable payment to the cancellation attorney.

7. FICA (Financial Intelligence Centre Act) and POPI (Protection of Personal Information Act)

7.1 FICA

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

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

FICA legislation furthermore obliges transferring attorneys to report 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 that you will need to bring along when you sign the transfer and bond documents at our offices.***

7.2 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 shall present this consent for your signature when you visit our offices to sign the transfer, bond cancellation and/or bond documentation. Rest assured that we shall only process your information for transfer, bond cancellation and/or bond related purposes and that we comply fully with the POPI Act.

8. Paying the purchase price

It is the transferring attorney's responsibility to ensure that the full purchase price is secured and paid to all the respective parties on registration. As this is a huge responsibility with associated risk, a purchaser is required to pay the funds into our trust account or provide guarantees (see 11).

Ways in which a purchaser can pay or secure the purchase price are to:

a) Make partial or full cash payment into our trust account (deposit). If the purchase agreement requires the purchaser to pay a deposit, it must be made promptly. If the purchase agreement stipulates that the deposit must be invested, we shall invest it once our bank has confirmed that the funds are available and we have received the purchaser's FICA documents. If the purchase agreement does not contain an instruction to invest the funds, we shall proceed to invest it only after the purchaser has instructed us in writing to invest it.

b) Procure a bond to cover the full purchase price or a portion thereof. A guarantee will be issued to secure the amount available from the bond.

c) Issue a guarantee from an investment.

d) Pay the full purchase price or a portion thereof from the sale of the purchaser's property. There must also be a guarantee to secure the amount available from the purchaser's sale.

In a purchase agreement, there are usually two important terms relating to the purchase price, namely 'bond approval' (see 9) and 'guarantees' (see 11).

It is important to distinguish between the terms 'bond approval' and 'guarantees'.

When we talk about *'bond approval'*, it refers to the fact that a purchaser's bank has rated him/her creditworthy and have found value in the relevant property to grant a mortgage loan for him/her to purchase it.

The delivery of *'guarantees'* refers to a purchaser's bank issuing a document in which it undertakes to pay specified nominees under certain conditions. A bank can only issue guarantees after the bond attorney has met all the relevant administrative and legal requirements.

Point B on the flowchart depicts the receipt of the deposit (see 28).

9. Bond application and bond approval

If a purchase agreement contains a suspensive condition (i.e. that a purchaser must procure a loan), it is vital that he/she must apply for a loan immediately to avoid unnecessary delays in the transaction.

The purchaser must start immediately with the application process, as the transaction may fall through should the purchaser not comply with the suspensive conditions timeously as stipulated in the purchase agreement. In the current economic situation, banks take longer than usual and as expected to approve an application.

As a purchaser, you can either contact your personal banker or use a bond originator to submit your application. One benefit of using a bond originator is that your application will be submitted to more than one bank, which increases your chances of securing a bond.

Banks pay the bond originator's professional fee. Don't use a bond originator who charges you extra to submit an application or who requires the bond registration attorney to pay him/her from the proceeds of your bond!

Banks are generally not in favour of transactions that include the transfer and bond registration costs in the purchase price and thus form part of the loan amount. In certain cases, a bank will allow this (for example, in the case of some first-time home purchaserss). If you are a purchaser, make

sure you inform your bank to add the cost component to the loan amount. As a purchaser, your bond originator and/or personal banker will be able to advise you about different products that banks offer.

Never sign an addendum stating that a seller or agent will pay the costs or that the purchase price will be reduced. You will be committing fraud if you try to mislead a bank in this way! The right way to handle this situation is to disclose the added costs or reduction of the purchase price. The bank will then decide whether or not to increase the loan amount to include costs.

The transaction process will undoubtedly run more smoothly if only one attorney attends to both your transfer and bond registration. The advantages for you as the purchaser, is that it avoids unnecessary correspondence between different legal firms, and you will only need to provide your FICA documentation once and sign the relevant documents at one attorney's offices.

☞ ***Should you as a purchaser prefer us to handle your bond registration, you will need to instruct your personal banker or bond originator to request our appointment as your bond registration attorney.***

Point C on the flowchart depicts the receipt of the bond instruction (see 28).

10. Signing documentation at our offices

We shall schedule an appointment with both the purchaser and seller to sign the necessary transfer documentation as soon as the suspensive conditions have been fulfilled and the conveyancing secretary has drafted all the documents.

Be mindful that the registration process will obviously be delayed at this stage if either party is not ☞ available for signature. For this reason, ***we would appreciate you informing us well in advance if you will be unavailable or have any planned travel arrangements.***

In terms of our service level agreements with the respective banks, as well as fulfilling FICA requirements and those of the Deeds Registries Act, it is preferable to sign all relevant documentation in the presence of an attorney, either at our offices or at those of a legal colleague. It therefore makes it difficult for both our staff and other clients if you request us to visit your home or office environment to sign documentation.

We value our clients however, and are willing to accommodate your schedule by arranging an appointment outside of normal office hours if necessary.

If you appoint us as your bond attorney, we shall email the bond registration documentation to you to study at your own convenience before signing it at our offices.

Point D on the flowchart depicts the signing of the documentation by a purchaser (see 28).

Point E on the flowchart depicts the signing of the documentation by a seller (see 28).

☞ ***Remember to bring along originals of all the required documents to your scheduled appointment as requested by our conveyancing secretary / conveyancer, as FICA requires that we verify the authenticity of all copies kept on file.***

If you need directions to our offices, please view the map under 'Contact Us' on our website www.mcvdberg.co.za.

We look forward to assisting you and trust our professional service will ensure you have a pleasant business experience!

11. Guarantees

A *'guarantee'* is a written undertaking a bank makes after granting a bond to a purchaser. This undertaking involves paying a certain amount to a specific beneficiary on an uncertain future date when certain events take place. In a property transaction, these events usually refer to the following:

i) The registration of a property into a purchaser's name (transfer).

ii) The registration of a purchaser's bond.

iii) The cancellation of a seller's bond.

In most cases, a bank will authorise the bond attorney to issue the guarantees on its behalf.

Guarantees can only be issued after

i) the seller's cancellation figure has been received;

ii) the purchaser's bond has been granted;

iii) the bank has instructed its panel attorney (bond attorney) to handle the registration of the purchaser's bond;

iv) the purchaser has signed all the relevant bond documentation at the bond attorney;

v) all the required documents have been handed to the bond attorney;

vi) the purchaser has complied with all the other bond requirements.

Under normal circumstances, guarantees are issued within two weeks from the date on which the bond attorney receives the bond instruction from the bank.

We usually request the following two guarantees:

a) The first guarantee in favour of the seller's bank is requested to settle the seller's bond account in order to cancel the bond. On date of registration, the amount due in terms of this guarantee will be paid directly into the seller's bond account. This means that the seller's bond will be settled on the date of the property being registered in the purchaser's name.

   This guarantee includes interest, which is calculated from the date on which the cancellation figure is issued until the date of payment (i.e. the registration date).

b) The second guarantee is requested in favour of our firm. This guarantee represents the difference between the purchase price and the cancellation figure (profit). On date of registration, the amount due in terms of this guarantee will be paid into our trust account.

Point G on the flowchart depicts the issuing of the guarantees (see 28).

12. Cancelling the seller's current bond

It is not possible to transfer a property while it is still encumbered by a bond. The seller's bank, namely the financial institution who is the current bond holder, must give written consent to cancel such a bond. If you as a seller intend to cancel your existing bond over a property, we shall require your bond account number to inform your bank accordingly.

The seller's bank will then provide us with a cancellation figure, which refers to the outstanding amount plus interest required, to cancel the bond. Once we receive the cancellation figure, we shall ask the bond attorney to issue the guarantees.

Point F on the flowchart depicts the receipt of the cancellation figure (see 28).

As a seller, your bank will instruct an attorney (cancellation attorney) to handle the bond cancellation. Note that the cancellation attorney will only be able to finalise the cancellation of the bond if the guarantees the bond attorney has provided are sufficient to cover the cancellation figures.

The National Credit Act (NCA) requires 90 days' notice of a seller's intention to cancel his/her bond; otherwise the bank may charge penalty interest should the seller cancel his/her bond before 90 days have expired.

Should your bond be cancelled before the 90-day period has expired, *pro rata* penalty interest will be charged for the remainder of the 90 days. For example, if a seller gives 90 days notice and the bond is cancelled within 30 days from the date on which he/she gave notice, penalty interest will be charged on the remaining 60 days. The monthly penalty interest is equal to a month's interest payable on your bond.

It is always sensible to advise your bank in writing of your intention to cancel. When you instruct us to transfer your property, we shall also notify your bank about the bond cancellation as a standard practice. ***The 90 days' notice period commences once you or we (as your transferring attorney) give notice. In both instances, the penalty interest will be applicable to your bond cancellation before the 90-day notice period expires.***

Be mindful that as a seller, you need to continue paying your monthly bond instalments until the property has been registered in the purchaser's name. If you don't do this, it will not only reflect negatively on your credit record, but may also result in the cancellation figure exceeding the amount available in terms of the guarantees.

Banks all have different cut-off dates to cancel debit orders. This means that a bank may deduct an additional bond instalment from a seller's account if property registration occurs after its cut-off date. Should this happen, your bank will refund you accordingly.

The cancellation attorney will request the seller to complete and sign a refund sheet confirming his/her account details where the bank will deposit a refund if necessary.

13. The existing title deed

In a property transfer, the existing title deed must be lodged as a supporting document at the deeds office to conclude the transfer. If a bond is registered over a property, the bank will be in possession of the current title deed. If there is no such bond, however, the seller should have the current title deed. In both these cases, we shall need to receive the original title deed to conclude the transfer.

If the current title deed is misplaced, we can obtain a certified copy thereof at the deeds office at an additional cost. This may however, cause a delay in the registration process. ***If the original title deed is lost, make sure to inform us immediately.***

14. Receipt of costs

Earlier in this guide, we mentioned that our firm will charge, collect and administer various fees and disimbursements to ensure the property transaction is finalised successfully. When we send a *pro forma* statement of account to you, the purchaser, ***it is in your best interest to pay it as soon as possible to avoid any delays in finalising the property registration process.***

Point H on the flowchart depicts the receipt of costs (see 28).

Note that all these amounts payable to our firm must be paid into our trust account. You will find the trust account banking details in the initial letter we sent to you at the start of the transaction.

Please always include a reference number on your proof of payment. The best way to track payments you make into our trust account is to include your file reference number, which we provided in the initial and subsequent letters sent to you. We further request that you inform the conveyancing secretary of your proof of payment via email. This will enable her to quickly identify your payment on our bank statement, and where applicable, to invest the money for your benefit.

15. Transfer duty

Anyone who purchases immovable property (e.g. houses, stands or sectional title units) has to pay a tax called transfer duty to the South African Revenue Services (SARS). In some instances, a purchaser will be exempted from paying transfer duty.

The most common example is a transaction involving a seller who is registered for VAT. Instead of the purchaser paying transfer duty, the seller will then be liable to pay VAT.

When a purchaser pays the transfer duty amount into our trust account, it enables us to make the payment to SARS. Once SARS receives this payment, it issues a transfer duty receipt, which we then lodge as a supporting document at the deeds office to complete. Note that our conveyancing secretary requires both the seller and purchaser to provide their income tax numbers and sign the transfer documents (including the transfer duty declarations) before we are able to apply to SARS for the transfer duty receipt.

Depending on the work load of SARS employees, it may take two to three weeks to obtain a transfer duty receipt. Remember that we can only lodge at the deeds office when we have all the

relevant documentation, including the transfer duty receipt. For this reason, we stress the importance of paying your statement of account, (which includes the transfer duty), timeously to avoid any unnecessary delays in the property transfer process.

Point I on the flowchart depicts the lodgement of the transfer duty declarations at SARS (see 28).

Point J on the flowchart depicts the receipt of the transfer duty receipt/exemption from SARS (see 28).

Both the seller and the purchaser need to ensure that all their tax-related matters are in order before SARS will issue a transfer duty receipt. Failing to resolve tax-related matters involving issues such as VAT, a valid income tax number and income tax could cause significant delays in the property transfer.

SARS requires that the income tax numbers of both the seller and the purchaser need to appear on the transfer duty declarations. ***If you do not have an income tax number, it's important to apply for one without delay to avoid hampering the transfer process.*** If you have already applied, providing us with proof of your application will help to minimise delays in SARS issuing a transfer duty receipt.

The true value of a property is important to SARS, and it relies on both parties and the transferring attorney in a transaction to act with integrity in this regard. The seller and purchaser will sign documents at our office confirming the true purchase price.

Since we at M.C. van der Berg Inc. are committed to ethical and professional conduct, we appreciate our clients adhering to the same values. We are obliged to report transactions where the parties intentionally change the purchase price to evade paying tax.

In cases where SARS may require additional proof of a property's value, we usually ask a seller to provide us with the property's municipal valuation, which appears on the second page of the municipal account. In other cases, SARS requires a market comparison from two independent estate agents. While we shall assist in obtaining these valuations, we may request a seller to provide them.

According to the provisions of the Transfer Duty Act, an agent's commission always forms part of the purchase price, irrespective of whether a seller or a purchaser pays it. It is important therefore, to always take an agent's commission into account when calculating the transfer duty.

The Minister of Finance may amend the formula for calculating transfer duty from time to time. You will find updated transfer duty rates on our '*MCostCalculator*' on our website at *www.mcvdberg.co.za*.

Please note that SARS charges 10% penalty interest per year on the transfer duty amount if the transfer duty is not paid to SARS within six months of date of signature of the purchase agreement.

Our *pro forma* account will indicate the transfer duty amount that a purchaser needs to pay. You can also calculate the transfer duty payable by using our '*MCostCalculator*' on our website at *www.mcvdberg.co.za*.

16. Capital Gains Tax (CGT)

A seller is liable to pay Capital Gains Tax (CGT) together with income tax at the end of the financial year. We therefore, do not administer or pay out CGT before a transaction has been registered. If you are unsure about the amount of CGT you need to pay as a seller, please discuss this with your auditor or tax consultant.

17. Compliance certificates (COC's)

17.1 Electrical compliance certificate

In terms of the Occupational Health and Safety Act, a seller must provide an electrical certificate of compliance (COC) to a purchaser (or transferring attorney) before occupation or registration, whichever is earlier.

This certificate may not be older than two years. The certificate will lapse if any alterations or additions are made to the electrical installation after it has been issued. This will mean a new electrical certificate has to be issued.

It's important to note that an electrical compliance certificate certifies that an electrical installation is safe and not necessarily that it is in working order. The certificate therefore does not certify that appliances such as stoves and swimming pool pumps are in good working order. Your purchase agreement may include a clause requiring the seller to ensure that the installation and appliances are indeed in good working order.

As a seller, make sure to obtain this certificate as soon as possible, as repairs may be necessary (especially in older houses), which can delay registration. While an electrical certificate will not be lodged at the deeds office, it will be required before lodgement. This is because most banks require a copy of the electrical certificate before they will give consent for a bond to be lodged.

Bear in mind that the cost of this certificate and any installation-related repair costs will be for the seller's account.

17.2 Small-Scale Embedded Generation (SSEG), Batteries and Inverter / UPS (Uninterruptable Power Supply)

If a SSEG system, which is permanently coupled to the property, is installed on the property ~~with~~, the normal E-COC in 17.1 above will not cover the SSEG installation. A SSEG is a system that can generate its own power e.g. generator, solar panels or wind turbines. The Electrical Compliance Regulations issued in terms of Occupational Health and Safety Act (OHS) requires that an additional SSEG-Test report must be issued together with the Electrical COC and the standard test report (see 17.1).

A Power Back-up system or Uninterruptible Power Supply "UPS" refers to any distinct equipment used to store and/or convert electricity, but which cannot generate power, e.g. batteries and inverter or UPS. If such a system is installed on the property, the normal E-COC and standard test report in 17.1. will suffice on condition that it specifically refers to such installation.

Both the SSEG and Power back-up system are generally regarded as fixtures to the property, but if contractually stipulated otherwise, the seller may remove them. A new E-COC will then be required. If any if these forementioned equipment is leased, the seller must indicate it in the contract.

17.3 Electric fence certificate

If the property transferred is connected to an electric fence, the Occupational Health and Safety Act requires that a seller provides a purchaser or transferring attorney with an electric fence certificate before registration. This certificate certifies that the installation is in accordance with the relevant code of the South African Bureau of Standards (SABS). An electric fence certificate is in addition to the electrical compliance certificate. While it is transferrable, it becomes void once any alterations or additions are made to the installation,

If the property you are selling is connected to an electric fence, make sure to inform us at the start of the transaction.

We also recommend that you obtain this certificate immediately, since it may be necessary to do repairs (especially in older houses), and this could cause delays in the process. You can obtain this certificate by contacting the initial installer of the electrical fence or any other registered installer.

Although an electric fence certificate is not lodged at the deeds office, it is likely that it will be required before the bank gives permission for lodgement.

The cost of this certificate and any electric fence-related repair costs will be for the seller's account.

17.4 Gas certificate

The Occupational Health and Safety Act requires that, when selling a property with a permanent gas installation, the seller is required to provide a gas certificate to the purchaser or transferring attorney before date of occupation or registration, whichever is earlier. This certificate must verify that the gas installation is safe and complies with SABS standards.

The Regulations do not prescribe the validity period of the gas certificate. Any modification or alteration to the installation will however require a new gas certificate. The regulations require that the 'coupling hoses' must be replaced every 5 years. As this is a modification it indirectly limits the validity of the certificate to 5 years.

Apart from the aforementioned, a new gas certificate is required every time the owner or user of the installation changes. ***In other words when a property is sold, a new gas certificate is required.***

It is vital that a seller informs us at the start of the transaction whether his/her property has a gas installation.

Repairs (especially in older houses) may be necessary before a gas installation company can issue this certificate. For this reason, we recommend obtaining a gas certificate immediately to avoid any unnecessary delays in the transaction process.

You can ask the original company that did the gas installation to issue a gas certificate or otherwise contact any gas installation company for assistance. The cost of the certificate and any related gas repair costs will be for the seller's account.

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

Section 14 of the Cape Town Water By-Laws of 2010 regulates the issue of plumbing- or water certificates. According to these By-Laws, a seller is obliged to obtain a plumbing certificate from a certified plumber. The issuing of such a certificate is a requirement to successfully transfer any property in the municipal jurisdiction area of the city of Cape Town.

Section 14 of the By-Laws further states that the certificate needs to be submitted to the Cape Town Municipality before it will issue the clearance certificate for the relevant property. If a seller fails to submit this certificate, he/she may be found guilty of an offence and the municipality may impose a penalty.

A plumbing certificate guarantees that:

1) the water installation conforms to the National Building Regulations and the By-Laws;
2) the installation has no defects;
3) the water meter is in a working condition and registers when water is running; and
4) there is no discharge of storm water in the sewer system.

The seller will need to pay the costs of issuing the certificate and any other repair-related costs.

17.6 Beetle Certificate (only applicable to properties situated in coastal areas)

Purchase agreements for properties in coastal areas usually contain a clause that a seller is obliged to obtain a beetle certificate guaranteeing the absence of beetles in or on the property.

If this applies to you, make sure that the guarantee in the certificate covers all beetles and not just one specific beetle species.

The cost of the certificate and any costs relating to the extermination of beetles on the property will be for the seller's account.

18. Clearance certificate

18.1 Municipality

In terms of legislation, a property cannot be registered in the deeds office unless the relevant town or municipality has certified that all rates, taxes and charges for utilities relating to that property have been paid in full. We must therefore obtain a certificate known as a rates clearance certificate from the relevant council. This certifies verifies that all rates and taxes as well as charges for utilities regarding the property have been paid in advance.

Since June 2008, municipalities have also required sectional title owners to pay property taxes directly to them. This means we have to obtain a clearance certificate from the municipality to transfer a full title property or a sectional title unit.

We employ the services of an external municipality consultant to obtain the clearance figures (the amount payable before the council will issue a clearance certificate). We have found that it hastens the issuing of clearance figures and clearance certificates.

As part of our rates clearance application to the town or municipality, we shall request the clearance figure that the seller must pay before the council will issue a clearance certificate. A copy of the seller's latest rates statement as well as utilities statement must accompany this request. Note that the council will require photos of the electrical and water meters if the amounts on your utility statement are an estimate and not an actual reading. If the seller uses pre-paid electricity, he/she will need to provide a photo of the electrical meter to accompany our rates clearance application. If a third-party service provider supplies electricity, a seller will need to attach his/her latest statement from the provider. It is important to provide these statements and photos as soon as possible. The clearance figures include all amounts in arrears as well as an estimated provision for both rates and taxes and fixed levies (sewerage) for 120 days (four calendar months). After we have received the clearance figures, we forward it to the seller for perusal and approval before payment is made.

Since clearance figures expire after a month, it is unnecessary to apply prematurely, so we apply at the most practical and relevant time for each transaction. The waiting period for clearance figures depends on the particular municipality but takes on average about a week or two.

The municipality's policy is to avoid apportioning funds between the seller and purchaser or crediting any funds to the purchaser's account. ***As a result of this practice, we are compelled to collect all funds for the arrears as well as the advance payment for the clearance figures from the seller, because he/she will eventually receive all refunds*** directly from the council. Should a seller not have the funds available, he/she can obtain bridging finance at own cost against security of the anticipated transaction proceeds.

Once we have received the funds for the clearance figures from the seller, we make payment to the municipality. It usually takes between 10 to 15 working days from receipt of payment for the municipality to issue the clearance certificate.

The clearance certificate must be lodged as a supporting document at the deeds office to conclude transfer.

Point K on the flowchart depicts the receipt of the clearance certificate from the municipality (see 28).

18.2 Homeowners' Association (HOA)

When a property is situated in an area such as a security estate, it is subject to the rules and regulations of a Homeowners' Association (HOA).

As with rates and taxes, it is not possible to transfer such a property unless the HOA issues a clearance certificate. This document is lodged as a supporting document at the deeds office. The HOA issues a clearance certificate as soon as it receives payment of the levy clearance figure. This certificate certifies that the seller has paid all levies due to the HOA in advance.

Procedures to obtain a clearance certificate from an HOA or a municipality are similar. We request a HOA to disclose the amount due and payable. Upon receiving the figure, we request the seller to pay the amount owing. Once the seller has paid the amount into our trust account, we pay the HOA, after which it issues a clearance certificate. This process may take a week or two, but usually doesn't delay the transfer process.

Most HOA's require a purchaser to sign a specific agreement before they issue a certificate. This stipulates that the purchaser will abide by the HOA's rules and regulations. Some HOA's will not issue a certificate before they have conducted an inspection of the property and if the property's approved building plans are not in order.

On date of registration of the property, we shall calculate the pro rata levies payable by the purchaser and the seller. Levies that the purchaser pays to the HOA in advance will be credited to his/her account as an advance payment.

The HOA will refund any credit due to the seller after the property has been registered.

18.3 Body Corporate

As with a HOA-managed property, a sectional title unit cannot be transferred without a body corporate issuing a clearance certificate certifying verifying that all levies have been paid in advance. The same procedure as that for HOA clearances will apply.

On the date on which a property is registered, we make a pro rata calculation of the levies the purchaser and seller need to pay. The levies a purchaser needs to pay in advance to the body corporate will be credited to his/her account by the body corporate.

The body corporate's managing agent will refund any credit due to the seller after registration. Read our *MCSectionalTitleGuide* for more information about sectional title transfers.

19. Occupation and occupational rent

In most purchase agreements, occupation by the purchaser only takes place on date of registration. In some transactions the parties agree (either initially in the purchase agreement or on a later stage in an addendum) that the purchaser can occupy the property before registration.

Either way, the parties cannot deviate from the negotiated terms involving this occupation date. It obliges the seller to give vacant occupation on the occupation date and the purchaser to take occupation of the property. If a purchaser is not ready to move in, he/she will still be held liable for the occupational rent from the occupation date. Note that a seller may not refuse occupation to a purchaser if he/she has complied with the terms of the purchase agreement.

The purchase agreement usually makes provision for various aspects that needs to be in place, e.g. occupational rent to be paid in advance, all documents to be signed, all costs paid etc. before occupation can be taken. We are legally bound to ensure that all these aspects are in place before we can advise the seller to give occupation. A purchaser must pay the occupational rent into our trust account before the date of occupation. We shall not be able to confirm receipt of these funds to a seller or agent before it reflects in our trust account.

The municipality does not permit a person taking occupation (purchaser) to open a utility account before registration. This means the utility bill will therefore remain in the seller's name until the property is registered (see 25).

20. What happens at the deeds office?

The deeds office is a division of the Department of Rural Development and Land Reform. Its main purpose is to hold a register of all land and the ownership thereof in South Africa. It is furthermore tasked with the administration and registration of property and all related acts, for example, the registration and cancellation of mortgage bonds.

Three registration actions usually take place simultaneously at the deeds office, namely transfer, bond registration and bond cancellation. This means that three attorneys must coordinate with each other to arrange that they lodge these actions at the deeds office at the same time. As indicated, this coordination is unnecessary if only one attorney firm deals with all three registration actions.

We usually arrange to lodge documentation at the deeds office after:

1) transfer and bond documents have been signed;
2) we have obtained the transfer duty receipt;
3) clearance certificates have been issued;
4) guarantees have been received and
5) we have received confirmation from the bond and bond cancellation attorneys that their respective banks have given permission to lodge.

Point L on the flowchart depicts the lodgement at the deeds office (see 28).

It takes about 6 - 8 working days from date of documents lodged at the deeds office to preparation. Preparation means when all the documents for the transaction have been finalised in order to transfer the property. It usually occurs the day before registration of the property.

Point M on the flowchart depicts the preparation in the deeds office (see 28).

Even though preparation usually occurs the day before registration, attorneys may request to hold over the documentation for a maximum period of five days if they are not yet ready for registration.

The documents will be ready for registration the day after preparation (unless one of the attorneys is not ready to proceed with registration). Registration refers to the day on which a property is transferred, an existing bond is cancelled and a new bond is registered. ***On day of registration the purchaser becomes the owner of the property and the seller ceases to be the owner.***

Point N on the flowchart depicts the registration in the deeds office (see 28).

21. Finances - payments

Both the guarantees (one in favour of the seller's bank and the other in favour of our trust account) usually pay out at midnight on date of registration, unless bank work volumes cause a delay. The seller's bond will therefore be paid in full via the first guarantee on date of registration. The second guarantee will be paid into our trust account, which means we shall be able to make payments to the parties the first business day after registration.

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

Provided the guarantees are paid out timeously, we shall issue the final statement of account for the seller and purchaser within 48 hours after registration.

22. Commission

We are contractually and legally bound to pay the commission to the agent on registration. We are therefore not authorised to withhold any commission, whether instructed by either the seller or the purchaser to do so.

23. What happens after registration?

After registration, certain procedures take place in the deeds office. These include numbering the registered documents, scanning them onto microfilm and capturing information into the deeds office's database. Once these procedures are completed within about two to four months, the deeds office delivers the documents to the attorney firm responsible for registering the particular deeds.

If a purchaser registered a bond over the property, the relevant attorney must deliver the new bond and title deed to the bank for safekeeping. We shall, however, also provide a copy of the title deed to the client. If the purchaser has not registered a bond on the property, we deliver the new original title deed to the purchaser for safekeeping.

24. Closing the municipal account and the seller's refund

After the property is registered, the following two actions must take place to close a seller's utility account as well as his/her rates and taxes account:

a) The seller must personally go and close the utility account at the municipal offices. Closing a utility account requires the seller to take a copy of his/her identity document and the completed 'cancellation of services' form (which we will give to you). If you as the seller do not close your utility account, the municipality will be unable to start processing any refund of overpaid funds due to you!

b) After property registration, we shall notify the municipality of this in writing. This notification activates the municipality's refund process to the seller.

In addition to our notification, the municipality also requires proof of registration from the deeds office in the form of a deed search. We therefore have to wait for the deeds office to update its database, which can take up to a month before we can submit the necessary notification to the municipality.

This notification is often lost in the bureaucratic system, with municipal staff often telling clients that the transferring attorney never notified them of registration. This is why as part of our own checks and balances we forward a copy of our notification, together with the municipality'sacknowledgement of receipt to both the purchaser and seller to verify that we have given notice to the municipality.

On date of registration, the municipality will be in possession of surplus funds for overpaid advance utilities. In an ideal world, the municipality should do refunds and allocate payments to either or both of the parties. Unfortunately, the municipality's policy does not allow funds to be apportioned between the seller and purchaser or credited to the purchaser's benefit. While we understand that sellers may experience frustration when experiencing issues involving refunds from municipalities, we are not in a position to do these refund calculations.

The onus therefore remains on the municipality to refund the full amount to the seller. ***Unfortunately, for various reasons the municipality's cooperation regarding refunds is limited.***

A refund or credit amount due to a seller from the municipality originates from one of the following three sources:

a) The initial deposit the seller pays to the municipality when opening a utility account has to be refunded to him/her.

b) In some cases, an unavoidable double payment is made to the municipality. When obtaining a clearance certificate, an attorney will make an advance payment to the municipalityfor rates and taxes as well as for fixed levies (e.g. sewerage). Since the seller also continues to pay the monthly rates and taxes, this results in a double payment being made to the council for rates and taxes to cover the period between the date it issues a clearance figure until the property is registered. The seller should therefore receive a refund. However, what often happens is that the council does a recalculation after registration and then discovers that amounts not included in the clearance figures are still owed.

c) The third refund source results from a seller making a superfluous advance payment for rates and taxes to the municipality. Registration of the property transaction must take place before the expiration date specified on the clearance certificate. This means therefore, that the municipality is also paid in advance on the date of registration for rates and taxes to cover the period between registration and expiration of the clearance certificate. In reality, the purchaser and not the seller should pay this advance payment. Since the purchaser becomes responsible for the municipality account from date of registration, the seller should therefore receive a refund in this regard.

Please note that it can take the municipality up to a year to pay the refund amount into the trust account of the conveyancers. The municipality also does not pay any interest on refund amounts and will only do a credit transfer to an existing municipal account if you visit their Customer Care Centre. In case of the latter, you must also provide the municipality with a confirmatory letter from the conveyancers stating that they consent to the credit transfer and that they do not have any financial interest in the refund payment.

A seller who wants to address his/her refund issue personally can take our notification and the acknowledgement of receipt to the municipal offices. However, if a seller is not willing to waste time or wait long for a refund, we can recommend a consultant who will speed up the refund process at an additional fee.

If you, as the seller, still receive a rates and taxes account for several months after registration, don't be surprised and do not pay it. The municipality can take up to six months to close the account.

Our best advice for the seller and purchaser is to visit the council together to close and open the relevant accounts.

25. The opening of a new municipal account by the purchaser

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

25.1 Utility account

A purchaser needs to open a *'utility account'* at the municipality within 2-3 weeks after transfer of the property has taken place. In order to open a utility account in your name, you need to provide the following documents to the municipality:

i) completed Account and Service Application: Household Consumer form (for natural persons) or the Electricity and Water Supply form (for entities), which is available at the municipality or at our offices.;

ii) a copy of the seller's identity document;

iii) a copy of the purchase agreement;

iv) a letter from our offices to confirm that the property is registered in your name as the purchaser (we shall email this confirmation letter to you on date of registration); and

v) a deposit (which differs from township to township) to open the utilities account (payable in cash or with card).

After opening your *'utility account'*, the municipality will provide a monthly account stipulating your utility usage and amount payable.

25.2 Rates and Taxes account

In order to open a *'rates and taxes account'*, the municipality requires a written confirmation from us, together with proof from the deeds office (deed search) that transfer of the property in the purchaser's name has indeed taken place. Our process entails hand delivering this confirmation to the municipality, obtaining an acknowledgement of receipt thereof and thereafter forwarding copies of both these documents to the purchaser and the seller.

Although this then enables the municipality to open a rates and taxes account in the purchaser's name, it can take up to six months before the council does this. ***We therefore advise a purchaser to visit the municipality once he/she receives our notification to ensure the simultaneous opening of a 'rates and taxes account and utility account' in his/her name. This will avoid the situation where he/she receives*** a rates and taxes account from the council after a few months claiming payment for providing several months of utilities.

26. Your expectations - our undertaking

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

You can expect that we shall:

i) Register your transaction as fast as possible. In the normal course of events when all parties cooperate (seller, purchaser, municipality, HOA, body corporate, SARS and the banks involved), and there are no unforeseen delays beyond our control, the transaction is usually registered within six to eight weeks after the purchaser's bond attorney has received the bond instruction.

ii) Provide professional, pro-active assistance.

iii) Answer your telephone calls and emails within 24 hours.

iv) Handle your transaction confidentially.

v) Provide access to the firm's conveyancers should you require any assistance.

vi) Ensure a conveyancer is available when you sign your documents at our offices.

vii) Assist you in Afrikaans or English according to your preference; Note, however, that our service level agreements with the banks stipulate that all bond documentation must be drafted in English.

viii) Ensure that settlement occurs within 48 hours after registration.

ix) Undertake to provide continuous feedback about the progress of your transaction and notify you when certain milestones are reached. (We have attached a flowchart to make it easier for you to track the process of your property transaction).

A	Purchase agreement received
B	Deposit received
C	Bond instruction received
D	Purchaser has signed transfer documents
E	Seller has signed transfer documents
F	Cancellation figures received
G	Guarantees received
H	Costs received
I	Transfer duty documentation lodged at SARS
J	Transfer duty receipt received from SARS
K	Clearance certificate received from the municipality
L	Documents lodged at the deeds office
M	Documents on preparation in the deeds office
N	Registration of property

The original or a copy of the new title deed will be forwarded to the purchaser once we receive it from the deeds office.

27. What you can do to facilitate the process

You can count on the commitment of our team to register your transaction quickly and effectively.

However, from the information above, you have probably realised that some aspects of the transaction process are not always within our control. With this in mind, ***there are ways in which you can assist us to facilitate the process.***

A purchaser can help by:

1) Immediately providing us with your FICA and any other documentation as requested;
2) Paying the deposit timeously;
3) Using your reference number when making any deposit;
4) Applying for mortgage finance immediately;
5) Requesting that our firm is appointed as your bond attorney;
6) Notifying us in advance when you will be unavailable to sign any documentation;
7) Signing the transfer documents when requested as soon as possible;
8) Settling your *pro forma* account immediately;
9) Ensuring that you have an income tax number and providing it to us immediately;
10) Ensuring that your tax affairs at SARS are in order.

A seller can help by:

1) Providing us with your FICA and any other documentation on request;
2) Supplying your bond account number;
3) Immediately providing us with your latest statements for rates and taxes or third-party service providers and photos of your meters (if applicable);
4) Signing documents as soon as possible when requested to do so;
5) Notifying us in advance when you will be out of town or unavailable to sign documents;
6) Transferring the clearance figures amount to us when requested;
7) Obtaining and forwarding the electrical compliance-, gas-, and electric fence certificates timeously;
8) Ensuring that you have an income tax number and providing it to us immediately;
9) Making sure your tax affairs at SARS are in order.

28. Flowchart of the transfer process

This flowchart indicates all the steps in the transfer process and can be found at the end of this document.

As previously mentioned, the normal turnaround time for a transfer is approximately six to eight weeks from when the bond attorney receives the bond instruction. Week 1 on the flowchart therefore starts when the bond instruction has been received.

It is important to understand that we are not aware of all the timeframes since the parties negotiate them in the purchase agreement between themselves.

An example of this is the time given for bond approval, which will be indicated as 'unknown' on the flowchart.

29. Message from the directors

The directors of M.C. van der Berg Inc. trust that this *MCQuickGuide* will provide you, our valued client, with 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, 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.

Visit our website at www.mcvdberg.co.za or contact us on 012 660 6000 or info@mcvdberg.co.za.

The MC-Team look forward to meeting you over the best cup of coffee in town!

Scan for short
introductory video.

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