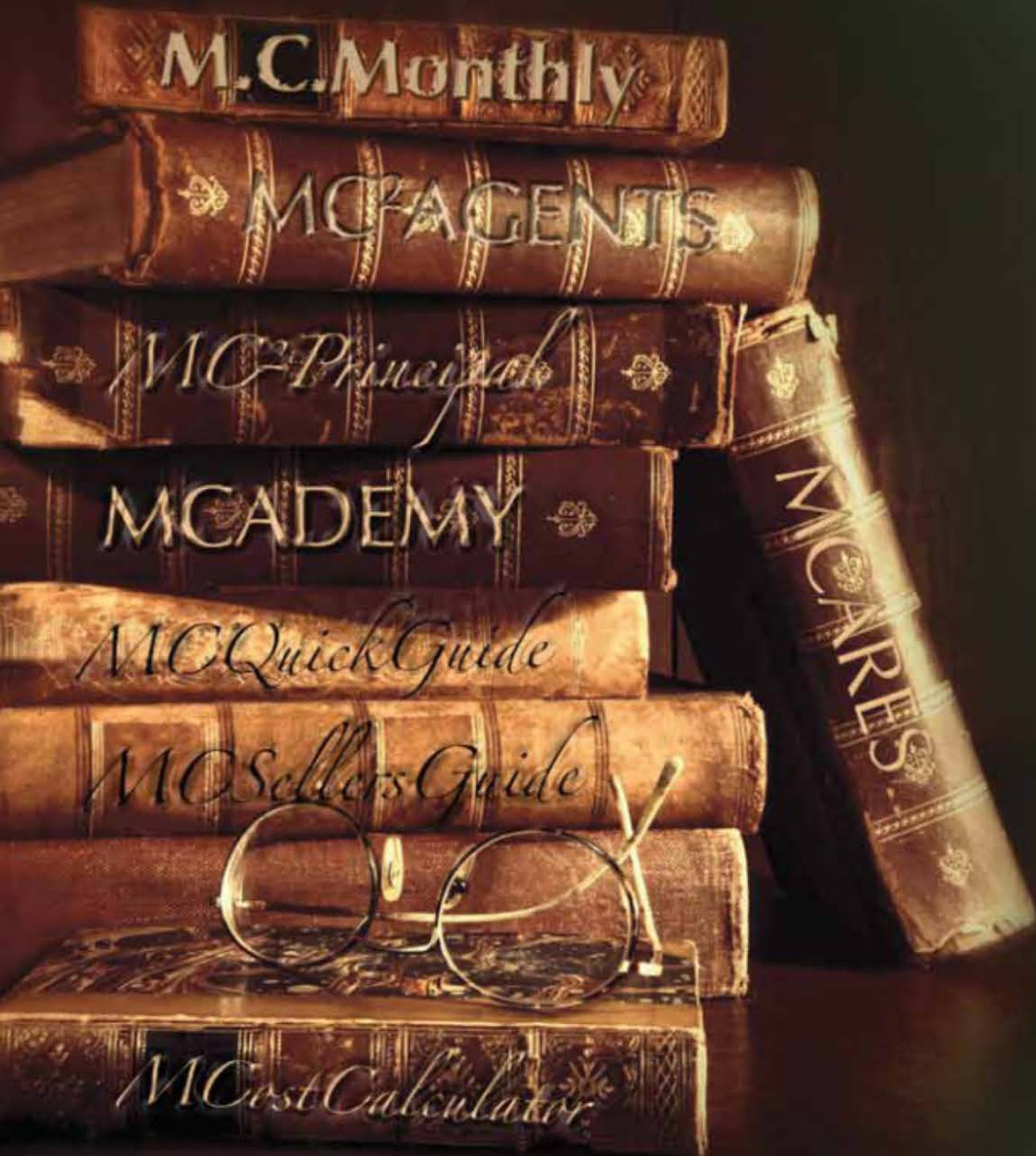


MCSellersGuide

Revised February 2025



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

Your Property Attorneys

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Legal indemnity – M.C. van der Berg Incorporated has compiled this Seller’s Guide to provide general legal information regarding the sale of immovable property. It should not be interpreted as being advice applicable to your specific transaction. Additionally, it is not binding on MC van der Berg, any financial institution, or other parties. As legislation, procedures, and processes frequently change, readers are encouraged to contact us for accurate and up-to-date advice.

1. Introduction

Welcome to the Seller's Guide, provided free of charge by M.C. van der Berg Inc. This guide offers key information for prospective sellers and helps estate agencies fulfil their obligations under the Consumer Protection Act (CPA) and Property Practitioners Act (PPA).

To streamline the process, we have highlighted important aspects that need your immediate attention should you receive an Offer to Purchase (OTP).

This guide covers essential information to be aware of before you accept and OTP, while the Quick Guide (which is also available on our website or via email) provides an in-depth look at the transfer process once you have instructed us to proceed with the transfer of your property.

Our aim is to build a mutually beneficial relationship by sharing legal insights and assisting you to navigate the complexities of property transactions smoothly.

We offer a free consultation to discuss your specific transaction, should you decide to appoint us as the transferring attorney.

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 in Midstream and Garsfontein (Pretoria East). Our company mainly conducts business in the greater Pretoria, Centurion, Ekurhuleni, Midrand, Johannesburg, and surrounding areas.

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

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

We value communication and prioritize feedback as a cornerstone of quality service. Our team is committed to a professional, timely property transfer process, whilst keeping you informed every step of the way.

For more information, visit www.mcvdberg.co.za.

3. Terminology

3.1 Attorney description

Attorney – A person who is admitted by the High Court as an attorney to practise law.

Conveyancer – An attorney who passed a specialised exam and is admitted by the High Court as a conveyancer and focuses on property law.

3.2 Contract terms

Offer to purchase (OTP) – A written offer from the purchaser to the seller, specifying all the purchaser's conditions for purchasing the property.

Purchase agreement – Once an OTP is accepted in writing by the seller, it becomes a binding purchase agreement, also known as a "deed of sale".

3.3 Estate Agency terms

Estate agent: The qualified property practitioner instructed and authorised to market your property, advising on all aspects of the transaction to facilitate the successful sale of your property.

Estate agency: The company the estate agent represents, also referred to as a business property practitioner.

Property Practitioners Act 22 of 2019 (PPA): Legislation governing the Property Practitioner industry since 1 February 2022.

Property Practitioner: A term covering various property-sector roles, including estate agents.

Property Practitioners Regulatory Authority (PPRA): Property Practitioners' governing body, also responsible for dispute resolution between Property Practitioners and the public.

Fidelity Fund Certificate (FFC): A mandatory certificate issued by the PPRA to every estate agent and estate agency proving compliance with the PPRA's legal and training requirements. You have the right as a seller to request the agent's FFC. If an estate agent does not hold a valid FFC, you should not do business with him/her.

Code of Conduct: The document containing the practical and ethical standards required from Property Practitioners. An abridged version of the [code of conduct](#) is available on our website.

3.4 Registration

An administrative act which takes place at the deeds office whereby a transaction is made official. It often requires that, on a specific date, a number of linked transactions are registered simultaneously, for example a transfer, bond registration and bond cancellation.

4. Your risk, your right, your choice

The transferring attorney plays a pivotal role in the sale and transfer of your property. Proper, timely legal advice helps protect you against potential risks in this process.

As seller, you have the right to nominate a conveyancer to attend to your property's transfer. It is advisable to appoint an established, reputable law firm that specialises in property law.

The PPA prohibits estate agencies or agents to enter into an arrangement, formally or informally, to oblige or encourage a seller to make use of the services of a specific transferring attorney. Although an agent may recommend the services of M.C. van der Berg Incorporated, we assure you that we do not have an arrangement with any estate agent or agency. Thus while they may recommend a transferring attorney, the choice remains yours.

Our mission is to ensure a fast and effective transfer, and we are committed to:

- Providing proactive, clear communication and weekly updates
- Ensuring that our requests are clear and unambiguous
- Responding to your enquiries within 24 hours
- Offering direct access to our conveyancers
- Assisting in either Afrikaans or English, based on your preference
- Settling and paying transaction proceeds within 48 hours of registration (barring bank delays, which we will promptly communicate);

5. Roles of the different attorneys

Various attorneys may be involved in a property transaction based on its specifics and actions required at the deeds office. Ideally, having one law firm handle all aspects can simplify and speed up the process.

The primary roles include:

5.1 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 both parties comply with the terms of the agreement;
- Drafting legal documents and overseeing signature thereof;
- Obtaining the transfer duty receipt/exemption from SARS and clearance certificates from the municipality, HOA and sectional title body corporate (if applicable);
- Holding the deposit in trust and managing the financial aspects of the transaction;
- Co-ordinating lodgement of the documents at the deeds office once all legal and contractual requirements are met;
- Ensuring that the relevant certificates of compliance (COC's) are provided (e.g. electrical-, electric fence- and gas certificates).

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

5.2 The bond registration attorney

The bond registration attorney oversees the registration of the purchaser's bond.

Some banks allow the purchaser to nominate a bond registration attorney, provided they are on the bank's bond registration panel. Using the same firm for both bond and transfer streamlines the process.

M.C. van der Berg Inc. is on the bond registration panels of Absa, FNB, Nedbank, Standard Bank, HIP (Housing Investment Partners) and SA Home Loans, and we will gladly assist with the bond registration.

5.3 The bond cancellation attorney

The bond cancellation attorney handles the cancellation of the seller's bond, where applicable. The attorney must be on the specific bank's cancellation panel.

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

6. Before accepting the offer to purchase (OTP)

Upon your written acceptance of an OTP, it becomes the binding purchase agreement. The purchase agreement together with legal principles and legislation create the rules of the game the transferring attorney adheres to during the transfer process.

Review any offer carefully before accepting it.

We offer a free consultation to discuss the OTP, should you decide to appoint us as transferring attorney.

7. Rules of the game – the purchase agreement

The purchase agreement is the seller and purchaser's instruction to the transferring attorney, which cannot be deviated from, without a signed addendum.

In most OTP's, you will find a 'memorial' clause stipulating that the purchase agreement constitutes the complete and only agreement between the seller and purchaser and that any variations must be in writing to be valid.

Verbal amendments are therefore not enforceable and should be set out in a written addendum. Our conveyancing experts can assist you with drafting legally sound addendums.

8. Suspensive conditions

Most sale agreements contain suspensive conditions. The sale agreement will not be enforceable and binding if these suspensive conditions are not fulfilled completely and timeously.

Any deviation from the terms of a suspensive condition must be set out in an addendum signed by the seller and purchaser before **its due date**. Together with the estate agent, we monitor these dates and formalise any amendment to the existing conditions.

A sale agreement typically contains two types of suspensive conditions, namely the mortgage loan and clauses pertaining to the sale of another property.

8.1 Suspensive condition: Mortgage Loan

As most purchasers rely on financing, a sale agreement will often be made subject to the approval of a mortgage loan.

This process typically takes a month, though circumstances may dictate a longer period. Each case should be assessed on its merits.

The approval timeframe should balance the buyer's needs without unduly impacting the seller by removing the property from the market for an extended period.

Be aware that the OTP may include an automatic extension clause, whereby the period for mortgage loan approval is automatically extended if the condition is not met within the initial timeframe. Also, be mindful of whether the time allowed for bond approval is calculated as 'business days' or 'calendar days' (if not a fixed date).

Some, purchase agreements read that the suspensive condition is deemed to be fulfilled once the bank approves the bond 'in principle' or when it issues a 'quotation' to the purchaser.

This condition is not in line with the provisions of the National Credit Act (NCA). The Act specifies that a loan is only formally granted once the borrower accepts the quotation

(this will include the bond amount, expenses, interest, and repayment period). An accepted quotation is therefore necessary before it can be said that the suspensive condition has indeed been fulfilled. The acceptance of the quotation must be communicated on or before the date set out in the purchase agreement.

8.2 Suspensive condition: 'Subject to the sale of another property'

A purchaser or their bank often requires that a currently owned property or a property owned by an associated person (spouse) or entity (trust or company) be sold and/or registered before the new transaction can proceed. This may be due to various reasons including affordability or availability of funds.

If an OTP is made subject to the sale of a currently owned property, ensure that it is effectively dealt with in the purchase agreement to protect both the purchaser and seller.

If an offer is subject to both the approval of a bond and the sale of a purchaser's property, bond approval should not be delayed pending the sale of the purchaser's property as it is essential to determine if the purchaser will qualify for the loan early on.

Our team or your estate agent can assist with the precise wording of the condition as it is technical in nature and often causes discord between a seller and a purchaser if not worded correctly.

9. Your next property

Avoid contractually committing yourself to buying a new property until all suspensive conditions in the sale of your current property's sale are met. If you intend to buy a new property it is sensible to ensure that your OTP is subject to the successful sale and registration of your presently owned property, irrespective of the fact that the sale transaction may be close to finalisation.

If you are both buying and selling, align the conditions and timeframes in both transactions. You are welcome to contact us for assistance in this regard.

10. Fixtures and fittings

Distinguish between the terms 'fixtures' and 'fittings.' **Fixtures** are items that form part of the property and may not be removed when you relocate e.g., curtain rails and pool equipment. Fixtures are sold with the property. **Fittings** are items that do not form part of the property, and you can take it with you when you relocate. Disagreements often arise over these terms because it is not always clear in which category a certain item falls, so it is best to clarify in the purchase agreement.

We recommend including a comprehensive list of fittings you intend to remove in the sale agreement and providing it to your agent and potential buyers. Some pro forma agreements include generic lists of fixtures and fittings, so review and adjust these lists for your specific transaction.

11. Costs

While the purchaser is responsible for transfer- and bond registration costs, the seller is responsible for some fees and charges which must be paid before registration can take place.

Some of these charges are standard, but some depend on the circumstances of the transfer.

11.1 Common Seller Costs: (see explanation below):

- Bond cancellation costs.
- Compliance certificates.
- Rates and taxes (City Council Clearance Certificate).
- HOA or Body Corporate Clearance Certificate.
- Estate Agent's commission.

11.2 Other costs (not necessarily applicable to every transaction):

- 4(1)(b) Application for rectifying title deed errors, should there be any errors on the current title deed.
- Regulation 68(1) application for a copy of the title deed if the original is lost.
- Section 24(6) application: Extension of a Unit (where a sectional title unit was extended).
- Registration of a General Power of Attorney.
- Section 68(1) Application: Removal of a Title Deed Condition

An explanation of some of these costs:

11.3 Bond Cancellation Costs

If a bond is registered over the property, it must be cancelled simultaneously with the registration of transfer. The seller bears the costs of cancellation. This fee increases with each additional bond to be cancelled. The seller's bank appoints the bond cancellation attorney. Even if the bond/s is paid up, the cancellation must still be effected in the deeds office.

11.4 Compliance Certificates

The seller is responsible for the costs of all compliance certificates. This includes an electrical compliance certificate as well as an electric fence-, gas-, beetle- and/or plumbing certificate (if applicable). Any repairs needed for certification and the cost thereof are also the seller's responsibility.

11.5 City Council Clearance Certificate

The city council provides a clearance certificate once the seller has paid the clearance figure, which will include rates and taxes for 3 months, as well as any outstanding amounts (see paragraph 16). The seller also pays the certificate fee. If there are account or meter issues, a city council consultant may be needed. Consultant fees range from R800 to R2,000 (or even more) and are payable by the seller.

11.6 HOA and Body Corporate Clearance Certificate

Properties within in a sectional title development and/or an estate require a clearance certificate from the Body Corporate and/or Homeowners' Association (HOA). The seller is responsible for payment of the administration fee payable to the body corporate and/or HOA which usually amounts to between R1 500 and R2 000 (as determined by the HOA/body corporate).

11.7 Agent's Commission

The seller is responsible for paying the estate agent's commission as per the commission agreement. The transferring attorney will deduct the commission from the proceeds before

disbursing it to the estate agency. The seller cannot unilaterally instruct the transferring attorney to withhold the commission or any part thereof after registration.

11.8 4(1)(b) Application (Rectification of a Title deed)

If there is an error (e.g., a spelling error in the property description or purchaser's name) in the holding (current) title deed it must be corrected before transfer can take place. The seller is responsible for the costs involved to rectify such error in the deeds office. The transferring attorney brings an application in terms of Section 4(1)(b) of the Deeds Registries Act on behalf of the seller.

11.9 Application in terms of Regulation 68(1) for Lost Deeds

If the original holding title deed is lost, the transferring attorney will apply to the deeds office for the issuing of a certified copy of the title deed. This involves advertising in the local newspaper where the property is situated and could also involve advertisement in the Government Gazette if the Deeds Office also does not have a copy of the title deed. The transferring attorney lodges the application to issue a certified copy and proof of advertisements at the deeds office. If the bank is responsible for misplacing the documents, they will carry the cost.

11.10 Section 24(6) Application (To amend a sectional title scheme)

If the owner (or a previous owner) of a sectional title property made improvements to the property and the extent of the property consequently increased, the sectional plans must be amended. The seller is liable for the costs involved. The process includes drafting of an amended sectional plan of extension by a land surveyor, obtaining a SPLUMA certificate by a town planner, as well as the application for extension of the unit by the conveyancer.

11.11 General Power of Attorney

If you want to authorise another person to sign documents on your behalf, a general power of attorney must be drafted and registered in the deeds office. The seller will be liable for the fee for drafting and registration of said power of attorney. Typically, a general power of attorney is required if the seller is not available to sign the transfer documents. Please inform the conveyancer should you foresee that you will not be available during the transfer process to attend to signature.

11.12 Section 68(1) Application – Removal of Conditions

If the current title deed contains an obsolete condition, it must be removed. Consent is obtained for removal from the institution (e.g., Municipality) in whose favour the title deed condition is registered. Thereafter the transferring attorney brings an application in terms of Section 68(1) of the Deeds Registries Act for removal of the condition from the title deed.

12. Cancelling your existing bond

The existing bond over a seller's property must be cancelled at the deeds office to enable the simultaneous, unencumbered transfer of the property into the purchaser's name. Even if the bond is paid off, cancellation of the bond in the deeds office is required.

The transferring attorney obtains the outstanding balance (cancellation figures) from the seller's bank and ensures that guarantees are issued to settle the balance on registration. The seller's bank will only consent to the cancellation of the existing bond on receipt of the guarantees.

In terms of the National Credit Act, the bank may charge penalty interest (equal to three month's interest 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 within 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. Any overpayment to the bank on this, or any other amount, will be refunded by the bank within a few days of registration.

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

If you need assistance with giving notice, reach out to us at bc@mcvdberg.co.za. We will request cancellation figures which serves as notice of the seller's intention to cancel the bond. The 90 days' notice period will commence on the date of our request.

Once cancellation figures are requested, no additional funds can be accessed from the bond account.

13. Tax related matters

13.1 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. Typically, only developers and speculators are liable to pay VAT. 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 or excludes VAT.

13.2 Transfer duty

If the property is not subject to VAT (see 13.1) the purchaser will be liable to pay transfer duty. The transferring attorney collects the transfer duty from the purchaser and pays it to SARS. SARS then issues a transfer duty receipt which the transferring attorney lodges at the deeds office.

13.3 Capital Gains Tax (CGT)

CGT is a tax payable by the seller if the proceeds are deemed to be capital in nature. Most property transactions fall in this bracket. The calculation of CGT is complex as inclusionary rates, income tax rates and subsequently the effective rates, differ from entity to entity. For individuals, a rebate of R 2 000 000 applies to the sale of a primary residence. The calculation of CGT is further complicated by expenses and costs that can be added to the base cost and others that can be deducted from the proceeds. We suggest consulting with a financial consultant with the appropriate knowledge and insight into your financial affairs for advice on CGT. Note that CGT is not paid over to SARS by the transferring attorney. The seller will make payment thereof (if payable) with his/her next tax return.

13.4 Income Tax

Income tax is only payable if the seller ventured into a scheme of profit making. In other words, a developer or speculator may become liable for income tax (and not for capital gains tax). A seller who has recently sold other properties, must consult his/her financial consultant to confirm whether the proceeds from such further sales will be deemed

income (in which case income tax is payable) or capital in nature (in which case capital gains tax is possibly payable).

14. South African Revenue Service (SARS)

SARS performs a risk analysis on both the purchaser and seller before issuing the transfer duty receipt/exemption.

Take note that SARS's systems are integrated and accordingly no transfer duty receipt will be issued if you have outstanding tax matters.

Outstanding tax issues will delay the transaction, and sellers should ensure all tax matters, including returns and payments, are up to date.

15. Compliance Certificates (COC's)

The Occupational Health and Safety Act (OHS) requires that certain compliance certificates must be in place when an immovable property is transferred. . The transferring attorney cannot proceed with registration without these certificates, and the purchaser's bank may also request it. It is essential to use qualified, registered, and trustworthy contractors as the seller remains liable if these certificates are issued inaccurately. We recommend that the agreement of sale regulates delivery of these certificates well before lodgement of the transaction in the deeds office to enable the parties to address any issues timeously.

Repairs may be required before these certificates can be issued. We recommend obtaining the necessary certificates as soon as possible to avoid any delays in your transaction.

15.1 Electrical Compliance Certificate

The OHS requires a seller to provide a purchaser (or transferring attorney) with an electrical certificate of compliance on the date of occupation or registration, whichever is earlier. This certificate certifies that the electrical installation is safe and complies with SABS standards.

The certificate does not certify that the installation or to any appliances such as stoves and geysers, are in working order. Refer to the specific clause relating to the electrical compliance certificate in your purchase agreement, which may require that the installation and appliances are in working order. You will then be obliged to ensure that it is indeed functional. If you already have an electrical compliance certificate, it may not be older than two years on date of registration of the property.

It is important to note that if there is a solar installation on the property, the electrical certificate of compliance must either cover the solar system, or a separate compliance certificate must be issued for the system.

If any alterations or additions were made to the electrical installation after the certificate was issued, it becomes void, and you will need to obtain a new certificate. This certificate may also be required by the purchaser's bank prior to lodgement.

15.2 Electric Fence Compliance Certificate

When transferring a property with an electric fence, the OHS requires a certificate verifying that the installation is in accordance with the relevant SABS standards. The seller needs to deliver this certificate, to either the purchaser or transferring attorney. Note that it is not covered by the electrical compliance certificate. An electric fence

compliance certificate is transferable but becomes void if any alterations or additions are made to the installation. This means a new certificate will have to be issued.

Where property is situated within a sectional title scheme, the certificate will be obtained from the body corporate.

15.3 Gas Certificate

If there is a gas installation, the OHS requires that you provide the purchaser or transferring attorney with a gas 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.

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.**

The original installer can issue the gas certificate. Alternatively, any qualified and registered gas installer will be able to issue this certificate.

The cost of this certificate and any expenses relating to the repair of the gas installation will be for the seller's account.

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

According to the Cape Town Water By-Laws of 2010 (Section 14), sellers are obliged to obtain a plumbing certificate from a certified plumber.

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

Purchase agreements for coastal properties usually contain a clause requiring a beetle certificate, which guarantees the absence of beetles in or on the property. The certificate should cover all beetle species, not only a specific specie.

The cost of the certificate and/or other expenses relating to the extermination of beetles will be for the seller's account.

15.6 Declaration regarding Invasive Species

In terms of Section 29(3) of the Alien and Invasive Species regulations of 2014, a seller has to notify a purchaser in writing, prior to concluding a sale agreement, of the presence of any listed invasive species on the property. This list is available on the website of the Invasive Species of South Africa (ISSA) at www.invasives.org.za.

16. Municipal accounts

The transferring attorney applies for a clearance figure, which includes all rates, taxes and charges for utilities in arrears, and a three-month advance payment. The municipality issues the clearance certificate after payment of the clearance figure.

If your account is in arrears, we will provide you with a figure that includes arrears. Do not pay arrears whilst we are in the process of obtaining the figures as it will confuse matters and may lead to double payment.

We will also guide you on closing the municipal accounts once registration has taken place.

17. Homeowners' Association (HOA)/Sectional Title Body Corporate

A sectional title unit or a property situated within an estate cannot be transferred without a certificate from the HOA and/or body corporate confirming that your levies are paid up.

The transferring attorney requests the clearance figures from the HOA/body corporate, which includes the levies in arrears as well as an advance payment. After payment of the figure the clearance certificate is issued.

18. Occupation and occupational rent

“Occupation” refers to the date on which the seller must give vacant possession of the property to the purchaser as agreed in the agreement of sale.

Both parties are legally bound to this date unless, unless they enter into an addendum at a later stage. The transferring attorney cannot change the occupation date or occupational rent conditions unilaterally or at the request of one party.

The agreement should also contain the requirements to be met before occupation can take place. Examples of such requirements are obtaining loan approval and paying the deposit. M.C. van der Berg Inc. will communicate whether the conditions have been met, and the seller should not allow occupation prior to compliance with the conditions. Evicting unwanted occupants when a transaction falls through due to non-compliance, is both costly and time-consuming!

Occupational rent is the amount payable by either party occupying the property while it is registered in the name of the other party. Typically, the purchaser pays occupational rent to the seller for pre-registration occupancy.

There is no fixed percentage for occupational rent, so the parties are free to negotiate and agree on any amount. We recommend that you include the negotiated amount in the purchase agreement, even if the occupation date is aligned with the registration date.

As the purchaser cannot open a utility account at the local authority in his/her name before registration, the seller remains liable for payment of the utility account until registration. The purchaser must however reimburse the seller for the utilities expenditure during the occupation period.

19. Insurance

As an owner, you are responsible for the short-term insurance over your property. Do not cancel your short-term insurance before registration as it will leave the property uninsured in the period between cancellation of the insurance and transfer of the property. If a purchaser occupies the property before registration, it can increase your exposure to risk, and insurance is therefore essential.

20. The Agent and Mandates

The services of an estate agent can be invaluable, and sellers often underestimate the complexities involved in marketing and navigating the legal process. An estate agent may not operate without a valid FFC. To hold an FFC estate agents must meet specific educational and training requirements aimed at equipping the estate agent to deliver professional service. Sellers can request to see an agent's valid FFC at any time.

Estate agents must adhere to a strict code of conduct.

An estate agent may only market and sell a property if they have a formal mandate from the seller.

The mandate terms are outlined in the written mandate agreement, which the seller and the agent signs.

While an open mandate (see below) can be given verbally, this approach can lead to misunderstandings and is generally discouraged. A written mandate ensures clarity about the mandate's existence and key terms, such as the commission payable.

A sole mandate and an exclusive mandate (see below) must be in writing and signed by the seller.

In practice, there are four types of mandates.

20.1 Open mandate

The seller authorises multiple agencies to market the property. The agent who is the effective cause of the sale will be entitled to commission. The seller is also entitled to sell the property with the understanding that this excludes purchasers introduced by the agent.

20.2 Shared mandate

The seller authorises a limited number of agencies (two or three) to sell the property. The agent who is the effective cause of the sale will be entitled to commission. The seller is also entitled to sell the property with the understanding that this excludes purchasers introduced by the agent.

20.3 Sole mandate

Only one agency has the right to market and sell the property to the exclusion of all other agencies. Due to the restrictive nature of a sole mandate, it is usually granted for a limited period. If another agency sells the property during this period, the seller remains liable for paying commission to the sole mandatory.

The seller is also entitled to sell the property, with the understanding that this excludes purchasers introduced by the agent.

A sole mandate must be in writing, contain a start and end date, include or refer to a marketing plan and be signed by the seller and estate agent.

20.4 Exclusive mandate

Only one agency may market the property, and the seller is not entitled to market and sell the property during the mandate period. The requirements for this mandate are the same as a Sole Mandate.

It is recommended that the seller carefully reviews the mandate before signature thereof as it governs the legal relationship between the seller and the agent.

21. Commission – liability

The seller's expectation is that an estate agency markets the property effectively and professionally and in return the estate agent earns an income from commission, which motivates them to put in their best efforts into marketing the property.

If not managed correctly, commission can cause discord between sellers and agents and result in legal disputes.

21.1 Commission in sole and exclusive mandates

By granting a sole or exclusive mandate to a specific estate agency, the seller agrees not to market or sell the property through other agencies.

An estate agent who holds a sole or exclusive mandate commits their attention, time, and resources to marketing and selling your property. If the agency holds a sole or exclusive mandate, you will remain contractually liable to pay commission to the mandated agency if another agency sells the property during the mandate period.

The seller can also be held liable for commission if they sell the property to a purchaser who was introduced during the sole or exclusive mandate period, even after the mandate expires.

21.2 Double commission

Often multiple agencies introduce the same prospective purchaser to the property. The general rule is that the estate agency who is deemed the “effective cause” will be entitled to the commission. However, determining the effective cause is not always straightforward, which can lead to disputes between agencies and potential double commission claims against the seller.

If a second agent introduces a purchaser, who has already been shown the property by another agent, the seller should disclose this information to the second agent. It is advisable to request that the agent provides a list of all individuals introduced to the property. This will allow the seller to verify whether another agency previously introduced a purchaser before you accept an OTP. Remember that small slip-ups could result in expensive double commission claims!

21.3 Private sale – commission claim

Sometimes a purchaser contacts the seller directly to purchase the property, unaware that an agent previously introduced this purchaser. A purchaser may deliberately withhold this information to avoid paying commission. When the agency later discovers that the purchaser who they initially introduced to the property bought it privately, the agency is likely to claim commission from the seller.

In private sale transactions, it is advisable to include a clause in the OTP where the purchaser confirms that he/she was not introduced to your property by any estate agent. Additionally the purchaser should indemnify the seller against any possible commission claims, making the purchaser liable for payment of commission, should it arise.

21.4 Deceitful behaviour

Some individuals send family members or business associates to view a property through an estate agent. The actual purchaser thereafter makes a sudden appearance and makes an offer directly to the seller without collaborating with the estate agent. The intention is to evade paying commission.

Sellers should be cautious of this practice, as it is not only unethical, but can result in the seller being held liable for the estate agent’s commission.

22. Building plans

Although the National Building Regulations and Building Standards Act requires building plans to be approved, there is no statutory requirement for approved, as-built building plans to be in place before a property can be marketed, sold or transferred. The immovable property condition report requires the seller to disclose whether there are approved as-built building plans.

A purchaser may make the sale conditional upon the delivery of the approved plans. Banks are also increasingly requiring approved building plans as part of the loan conditions.

Often sellers are not aware that building plans must be updated for structural alterations to the property such as building garden walls, erecting a Wendy house or lapa and even building a swimming pool.

Should the purchaser or bank require approved plans, and it is not available, it will delay your transaction, as it takes approximately 6 months for approval. In the case of sectional title units, the consequences can be even more severe as both building plans and sectional title plans must be updated and approved.

23. Town planning and legal compliance

Updating building plans may require addressing additional town planning and legal issues, such as:

- Building line relaxation.
- Permission for servitude encroachment.
- Servitude cancellation application.
- Removal of restrictive conditions contained in the title deed.
- Rezoning to increase allowable building controls (coverage/FAR/height).
- Permission for an additional dwelling unit (especially relevant with sectional titles with two units).
- Engineer's certificate for swimming pool (in dolomitic areas).

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

24.1 FICA

'FICA' is an acronym for the 'Financial Intelligence Centre Act.' The FIC Act requires attorneys, banks and estate agents to verify and retain certain information. We will provide a list of original FICA documents which you must bring along when you sign the transfer and bond documents (if applicable) at our office.

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

Avoid a transaction where a purchaser offers to pay a cash amount directly to you. Often this is suggested by purchasers to reduce the transfer duty amount payable to SARS. If you engage in such a transaction, you are assisting the purchaser to evade tax and take part in money laundering yourself (albeit unwittingly).

FICA legislation oblige transferring attorneys to report transactions involving cash payments of R50 000 or more to the Financial Intelligence Centre (FIC). Even though the cash is procured through legal means, it must be disclosed in the OTP, declared to the FIC and paid into our trust account.

24.2 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 (i.e. your identity number, contact details, email address etc.). We will request this consent when you sign the transfer, bond cancellation and/or bond documentation (if applicable) at our offices. We will only process your information for the purpose of your transaction.

25. Consumer Protection Act (CPA) and Property Practitioners Act (PPA)

The main goal of the CPA is to protect 'consumers.' The CPA, however, does not apply to all individuals, entities, transactions and business relationships. A property transaction where the seller is selling in the normal course of business is covered the CPA. In most cases, the CPA does not apply to the seller-purchaser relationship unless the seller is a property developer or speculator.

Estate agents serve both the seller and the purchaser in the ordinary course of their business. As such, the CPA regulates the relationship between the seller and the agent as well as the purchaser and the agent. The estate agent is required to inform and educate the seller and purchaser. This Seller's Guide has been created to assist estate agents to comply with these requirements.

26. Defects

26.1 Understanding defects

The legal principles relating to defects are shaped by legislation and common law principles and depend on a range of factors.

This guide focuses on the legal position for typical property transaction. i.e. where the property is sold by an individual through an estate agent. The legal position differs if the property is sold directly by the seller, as the purchaser then loses some statutory protection. The legal position also is also different if the property is sold by a developer or speculator.

The term "defects" includes both physical defects e.g., cracks and leaks as well as regulatory measures such as building plans.

There are two categories of defects, each with distinct legal implications:

1. **Patent defects** are defects that are visible or can be detected through a reasonable inspection. A typical example is a visible crack in a wall. Patent defects can also include non-visible but detectable defects such as a malfunctioning patio door. It may also be the absence of regulatory measures e.g. building plans.
2. **Latent defects** are defects that are neither visible nor detectable with a reasonable inspection. A typical example is a leaking roof or even a visible crack in a wall concealed by furniture.

26.2 The seller's obligation to disclose certain defects

The seller is required to disclose certain defects to the purchaser before the purchaser makes the offer, namely:

- All latent defects and
 - Patent defects of a significant nature.
- } Of which you are aware

These disclosures are made in the Immovable Property Condition Report (IPCR).

If the seller has not lived in the property for an extended period, this should be disclosed in the report. It is advisable to request the occupant of the property to supply the information. The seller can still provide details about certain matters such as repairs which you commissioned or regulatory matters.

The seller **is protected** against claims for those defects:

- Disclosed in the report, unless he/she contractually agrees to address it;
- He/she was not aware of;
- Which are not required to be disclosed.

The seller **is not protected** against claims for defects

- Required to be to be disclosed but were not;
- Covered by written contractual warranties;
- Contractually undertaken to be repaired;
- Concealed to deceive the purchaser.

26.3 Immovable Property Condition Report (IPCR)

If an estate agent is mandated to market and sell a property, the seller is required, in terms of section 67 of the PPA, to disclose the 'defects' as prescribed in the IPCR.

The estate agent must ensure that the completed and signed IPCR is provided to the purchaser before he/she makes an offer. The purchaser must acknowledge receipt of the IPCR. The IPCR must be incorporated into the agreement forming an integral part thereof.

The IPCR requires the seller to disclose defects they are aware of that are significant in nature. These defects include patent or latent defects that would or could significantly:

- have a deleterious or adverse impact on, or affect, the value of the property;
- impair or impact upon the health or safety of any future occupants of the property;
or
- shorten or adversely affect the expected normal lifespan of the property, if it cannot be repaired, removed, or replaced.

In addition to the defects disclosed as set out in the IPCR, the seller must, in terms of the common law, also disclose all other latent defects he/she is aware of, regardless of whether they are of a significant nature or not.

The seller will only be required to remedy defects that are explicitly agreed upon in the agreement. The seller cannot be held liable for defects that have been disclosed in the IPCR.

If the IPCR is not completed and signed by the seller, it is deemed that the seller did not disclose any defects, and the seller may be held liable for the defects he/she was aware of but did not disclose.

Even though it is only a requirement to complete the IPCR if an estate agent is involved, it is advisable to complete this document even when no estate agent is involved, as it offers protection to both the purchaser and seller in a transaction.

26.4 Property Report by a specialist or property inspector

The purchaser is entitled to obtain a specialized report from a qualified professional at his/her own expense before making an offer. Unless agreed thereto, the seller is not obliged to remedy any of the defects contained in the specialized report.

TIPS:

- **Complete the IPCR when estate agents list your property.**
- **Disclose all latent defects you are aware of.**
- **Disclose all patent defects of a significant nature as outlined above.**
- **Carefully review the report to ensure that you do not give any unnecessary guarantees or undertakings to repair, replace, or remove any defects.**

27. How to facilitate an expedient transaction

There are several steps you can take to assist us in ensuring that your transaction runs smoothly, including:

- Providing your FICA and any other documentation to all parties involved on request;
- Supplying your bond account number;
- Supplying your latest rates and taxes account, and if applicable, a photo or screenshot of your pre-paid electricity meter;
- Provide us with photos of water and/or electricity meter readings;
- Signing documents promptly when requested;
- Notifying us if you will be unavailable or out of town for purposes of signing documents;
- Transferring the clearance figure amount when requested;
- Obtaining and sending the relevant compliance certificates timeously;
- Ensuring that you have an income tax number (if applicable), and providing it to us;
- Ensuring that your tax affairs at SARS are in order;
- Confirming that your building plans are up to date.

28. Message from the directors

The directors of M.C. van der Berg Inc. trust that this Seller's Guide has provided you, our valued client, with essential and useful information.

We furthermore trust that this informative guide, together with our professionalism, effectiveness and expertise will ensure a hassle-free, pleasant, and exceptional business experience.

We invite you to place your trust in M.C. van der Berg Inc. Should you have any questions, feel free to contact us. Visit our website at www.mcvdberg.co.za, call us on 012 660 6000 or email us at info@mcvdberg.co.za.

M.C. VAN DER BERG^{INC}
ATTORNEYS, CONVEYANCERS & NOTARIES

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