



KANOKANGA & PARTNERS

ATTORNEYS | LEGAL PRACTITIONERS | NOTARIES & CONVEYANCERS



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A GUIDE TO THE TRANSFER PROCESS OF IMMOVABLE PROPERTY IN ZIMBABWE

The sale or purchase of immovable property can be a daunting task for any layperson be they foreigners or locals especially with the vexing terminology and the various processes and procedures involved.

The Republic of Zimbabwe is a landlocked country south of the Sub-Sahara region of Africa. Zimbabwe is boarded by Zambia, South Africa, Mozambique and Botswana. Zimbabwe is a multi-ethnic nation with diverse cultures, languages and unrivalled beauty. Zimbabwe is a former British colony which attained its independence on the 18th April, 1980. English is the most recognised and commonly used language in business and commercial transactions.

Zimbabwe is a Parliamentary Democracy and uses the Roman-Dutch Law legal system which has a strong influence of English Law in respect of Business and Commercial Law. Zimbabwe has developed an accurate system of property registration which allows international or non-residents to also become registered owners of immovable property in Zimbabwe. There are no prohibitions on non-residents from buying or selling immovable property in Zimbabwe. A non-resident is a person whose normal place of residence is outside of Zimbabwe (in the event that the non-resident decides to sell the property, the non-resident is permitted to repatriate his capital plus any profit made also at the time of repatriation of funds.

THE ESTATE AGENT

From the onset it is prudent for a seller to engage a reputable estate agent. Before engaging an estate agent it is important to verify with the Estates Agents Council of Zimbabwe whether such an agent is or would be registered. An Estate agent is a person *or firm of* persons who have an excellent understanding of property markets inclusive of



knowledge with respect to selling and or letting (managing) of commercial, industrial or residential properties on behalf of individuals or corporates. Estate agents negotiate on behalf of the seller with potential purchasers and also market the property, arrange viewings and see to the signing of the Sale Agreement. Estate agents are usually available throughout the entire process and assist both sellers and purchasers where need be. The seller will be responsible for the payment of the Estate Agents Commission which unless the parties agree otherwise is 5% of the purchase price of the property. Sellers can also sell their property privately and attend to the process without the assistance of an Estate Agent thereby saving on Estate Agents Commission.

THE TRANSFERRING ATTORNEY/CONVEYANCER

The process by which the Purchaser takes transfer is called conveyancing. The person (a lawyer) who does the conveyancing is called a conveyancer. Unless the parties agree otherwise, the Conveyancer is appointed by the seller to attend to the transfer process. The conveyancer attends to the transfer of the property from the seller to the purchaser and ensures that there is compliance with the terms and conditions of the Sale Agreement. The purchaser is responsible for the payment of the costs relating to the transfer of the property such as Conveyancing fees plus stamp duty.

THE BOND ATTORNEY

A bond is a loan of money to the Purchaser by a financial institution to enable him to pay the purchase price of the property, on security of the property purchased. The bond records that if the Purchaser fails to make bond repayments, the financial institution would be entitled to sell the property to recover the money it has lent. Should the Purchaser apply for a Mortgage bond to finance the payment of the purchase price the bond attorney attends to the registration of the bond. The bond attorney will be appointed by the relevant financial institution. The purchaser will be responsible for the payment of the bond registration fees.



THE BOND CANCELLATION ATTORNEY

Should the Seller owe money to the financial in respect of the bond, due to the borrowing of monies to procure same, then the seller has to request the bond holder to issue a cancellation instruction to an attorney. The cancellation attorney must obtain the original title deed to the property from the bond holder who will be holding same as security. The bond cancellation attorney then attends to the cancellation of the bond simultaneously with the registration of the transfer and the new bond, if applicable. The seller is responsible for the payment of the cancellation attorney's costs.

THE PROCESS

The Contract Of Sale

The sale of immovable property has to be reduced to writing in the form of an Agreement of Sale and be signed by both the seller and the purchaser to constitute a valid and binding agreement. It is advisable for both parties to get a legal opinion on the Sale Agreement before signing same. The signed contract is forwarded to the conveyancer who peruses the contract and makes note of all requirements and special arrangements to be made prior to the registration of the immovable property.

Preparing The Transfer Documents

The conveyancer requests the required documentation from the seller and the purchaser, for example, their identity documents, the original Title Deed etc. Once these documents have been received the conveyancer can then draw up the transfer documents such as the Power of Attorney, the Seller's Declaration and the Purchaser's Declaration whereafter the seller and purchaser will sign the documents in the presence of the conveyancer.



Obtaining a Rates Clearance Certificate

The conveyancer applies for a rates clearance certificate from the relevant municipality which municipality will advise on the amount payable. The municipality normally asks for payment of any arrear rates plus payment of three months in advance to ensure that no moneys are outstanding at the date of registration. The Deeds Office will not register a transfer if the rates clearance certificate has expired. The seller is responsible for the payment of the rates and taxes in advance.

Obtaining a Levy Clearance Certificate:

Where a sectional title unit is being sold the conveyancer will request levy clearance figures from the Body Corporate. The process is similar to requesting a rates clearance certificate and both certificates are required. The seller is similarly responsible for the payment of the levies to obtain the certificate.

Capital Gains Tax

Sellers have to pay capital gains tax on a property when it is sold. A capital gain (or loss) is the difference between the base cost of an asset and net selling price upon the disposal of the property. In other words it is a tax levied on the capital gain that arises from the disposal of an immovable property. Thus the seller, unless exempted, is in terms of the Capital Gains Tax Act (Chapter 23:01) required to pay Capital Gains Tax and obtain from the Zimbabwe Revenue Authority (Zimra) a Capital Gains Tax Clearance Certificate which certificate is part of the documents the Conveyancer lodges with the Deeds Office.

Lodgment & Registration

The conveyancer is now ready to lodge the transfer documents in the Deeds Registry. Should a new bond be registered over the property or an existing bond be cancelled the documents will be lodged at the Deeds Office simultaneously with the transfer. The



documents are examined in the Deeds Office by qualified examiners. The process takes not more than ten working days. When the Deeds Office is satisfied with the accuracy of the documents, the transfer is then registered.

Paying Out Of Proceeds

A Purchaser who agrees to have the entire purchase price released to the Seller before registration of transfer exposes himself to serious risk. It is advisable that the purchase price be held in Trust by the Conveyancer pending transfer. After registration the conveyancer has to ensure that the proceeds are reconciled and paid out correctly. If there was a bond registered over the property the outstanding amount as required by the bondholder is settled in full. The conveyancer pays the commission due to the estate agent (if applicable) and pays out the balance of the proceeds to the seller.



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