



**NR NAGEL**

ATTORNEY | CONVEYANCER | NOTARY

# Seller's GUIDE

DEDICATED TO EXCELLENCE





# SELLER'S GUIDE

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## 1. FIRST THINGS FIRST – SIGNING AN OFFER TO PURCHASE

As a starting point to the sale of immovable property, the seller will receive an Offer to Purchase from a prospective purchaser. On acceptance of the Offer to Purchase, together with the conditions contained therein, the said offer will become a legal and binding Agreement of Sale between the seller and the purchaser.

The seller, before acceptance, may however make a counter offer to the purchaser, should he wish to amend, or not to accept certain conditions contained in the Offer to Purchase. The said counter offer or amendment must be presented to and accepted by the purchaser in writing to be of force and effect.

Once the offer to purchase is signed and accepted by both parties, the Offer to Purchase becomes a legal, binding Agreement of Sale. In most cases the agreement of sale will contain a clause stipulating that the written agreement constitutes the whole agreement between the seller and the purchaser. This means that, any amendment, verbal undertaking or guarantee to the agreement, must be reduced to writing and duly signed by all the parties involved to be legally binding.

NR Nagel Attorneys will gladly assist the parties involved, in conjunction with the estate agent, to draft an Offer to Purchase in accordance with their respective needs, or to amend the conditions in the Agreement of Sale by drafting an addendum to the Agreement to ensure that the amendments are legal and binding between the respective parties.

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## 2. CONDITIONS IN THE AGREEMENT OF SALE

**The Agreement of Sale may contain both suspensive and general conditions and we will briefly discuss these conditions to ensure an easy and informed selling experience:**

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### 2.1 Suspensive conditions

An Agreement of Sale usually contains one or more suspensive conditions. The purchaser is able to make an offer to purchase subject to one or more suspensive conditions.

When an Agreement of Sale is subject to a suspensive condition, the contract only comes into effect if and when the condition, that the Agreement is made subject to, is fulfilled.

The Agreement of Sale will lapse in its entirety, and be of no further force or effect, should the suspensive condition not be fulfilled by the purchaser on or before the specified date. Commonly used suspensive conditions are for example, if the Agreement is made subject to the approval of a Final Bond by a Financial Institution or if the Agreement is subjected to the sale of the purchaser's existing property and we will briefly discuss these conditions individually below.

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### **2.1.1 Final Bond Approval**

Purchasers rarely have the resources to purchase a property in cash and will therefore most likely make an Offer to Purchase, subject thereto that a final bond grant be obtained from a Bank or Financial Institution.

The Agreement of Sale will specify the bond approval amount, as well as the due date on which such approval must be obtained. Normally the period for the approval of a bond by a financial institution should not take longer than 21 days, provided that the purchaser submits all required information and documentation for the home loan application, and further provided that the purchaser's financial status is in order.

Under certain circumstances, the bond approval might require a longer period for approval due to more strict lending criteria by the financial institutions. Examples of these instances are if the purchaser is self-employed or if a legal entity (Company, Close Corporation or Trust) purchases the property. It is highly recommended that the purchaser utilises the services of an experienced bond originator under these circumstances.

The National Credit Act states that a home loan is only finally granted on written acceptance of the final quotation by the purchaser. The final quotation will specify the expenses, interest payable, the bond repayment amount and the repayment period.

The suspensive condition pertaining to the approval of a bond will be fulfilled once a final bond grant is received from the financial institution on or before the due date and in accordance with the bond approval amount stipulated in the Agreement of Sale.

In the alternative, the Agreement of Sale will lapse in its entirety and will be of no further force or effect if the purchaser receives a letter of decline from the financial institution or if the purchaser receives an approval for less than the stipulated bond approval amount in the Agreement of Sale and unable to provide a deposit for the shortfall.

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### **2.1.2 Sale of Existing Property**

Purchasers often need to sell their existing property to enable them to purchase a new property. In these circumstances the purchaser might have to pay the deposit or the full purchase price on the new property from the sale of their existing property. The purchaser must therefore first successfully sell their existing property and deliver the guarantees for the deposit or the full purchase price, to enable the purchaser to purchase the new property.

In these circumstances the Agreement of Sale must be made subject to the sale of the purchaser's existing property. This specific condition is created for the benefit of the purchaser who has the right to waive such condition, should he/she wish to finance the property in an alternative manner, on or before the specified date.

However, the condition pertaining to the sale of the purchaser's existing property must be drafted with care to protect the interest of the seller. The condition must specify a specific date on which the purchaser must deliver the guarantees for the deposit or the full purchase price, dependent on the circumstances. This means that the purchaser must sell their property and the purchaser of their property must obtain a bond and deliver guarantees on or before the specified date.

Most sellers are rushed to sell their property and would not like to miss out on an opportunity of selling their property while waiting for a prospective purchaser to deliver the guarantees from the sale of their existing property.

Together with the drafting of the condition relating to the sale the purchaser's existing property, it is advised that an additional condition be added to allow the seller to market the property during the period provided to the purchaser to deliver the guarantees from the proceeds of their sale.

This will provide the seller with an opportunity to continue to market his property during the time that the purchaser is endeavouring to sell their property. This clause is generally referred to as: The Backdoor Clause or the Continued Marketing clause.

In the event of the seller accepting a further bona fide offer to purchase from another purchaser, for the same or higher purchase price, of which Agreement of Sale the guarantees have been delivered and of which all suspensive conditions are fulfilled, then the seller must give written notice to the purchaser in the first agreement to deliver guarantees for the full purchase price within 48 hours (or such other time as specified in the Agreement of sale) from the date of such notice. The seller is entitled to proceed with the second agreement should the purchaser fail to deliver such guarantees within 48 hours.

The suspensive condition will be deemed to be fulfilled and the transaction will be able to proceed on delivery of the guarantees by the purchaser, on or before the specified date.

In the alternative, the Agreement of Sale will lapse should the purchaser fail to sell his property and deliver guarantees for the deposit or the purchase price within the specified period.

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## **2.2. General Conditions**

Should the parties wish to add any additional condition, it must be added under general conditions before the Offer to Purchase is accepted and signed. These conditions are normally inserted where the parties agree upon a specific matter which is not dealt with under the normal clauses of an Agreement of Sale. As previously discussed, any verbal agreement will not be of any force unless it is reduced to writing and signed by both parties.

### **Examples of general conditions are the following:**

- a. The purchaser confirming that he has a 10% deposit available in the event of qualifying for only a 90% bond.
  - b. Registration of the property may not be effected before a certain date;
  - c. Certain defects will be repaired before registration of the property etc.
  - d. The seller must conclude an Agreement of Sale for a new property on or before a specified date.
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## **3. THE CONVEYANCING ATTORNEY**

On acceptance of the Offer to Purchase by the seller, the estate agent will supply the Conveyancing Attorney with a copy of the Agreement of Sale to enable the Attorney to proceed with the conveyancing process. The Seller as the owner of the property in question has the right and entitlement to choose the Conveyancing Attorney of his choice.

**It is at this crucial point where you can insist that your transfer be processed by NR Nagel Attorneys.**

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## **4. SELLER – CANCELLATION OF EXISTING BOND OVER SELLERS' PROPERTY**

On receipt of the Agreement of Sale, the Conveyancing Attorney will request the seller to provide the current bond account number, should the seller have an existing bond registered over the property.

If the seller does not have a current bond registered over his property, then he should be in possession of the original title deed and the Conveyancing Attorney will request the original title deed to be delivered to Conveyancing Attorney's office upon signature of the transfer documents.

Kindly take note that if a seller has already settled his bond and never requested for the cancellation of the existing bond, then the bond still needs to be cancelled in the Deeds Office, simultaneously with the transfer of the property to the purchaser.

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## **CANCELLATION FIGURES AND GUARANTEES**

The Attorney will request the bond cancellation figures from the Bank / Financial Institution. These figures will specify the amount that the Bank or Financial Institution require to settle the seller's current bond. The amount will include all arrear amounts, projected interest and penalty interest\*\*\*, which needs to be settled by the seller before the property can be transferred to the purchaser.

The Conveyancing Attorney will request a guarantee, based on the cancellation figures, from the new bond to be registered by the purchaser, in favour of the existing bond to be settled. The guarantee will be made payable upon registration of the property into the name of the purchaser.

In the event of a cash sale, then the Conveyancing Attorney will request guarantees directly from the cash payment of the purchaser, in favour of the existing bond holder, to be paid upon registration of the property.

The Bank will appoint the Bond Cancellation Attorneys to attend to the cancellation of the Seller's existing bond in the Deeds Office. The aforementioned attorneys will charge a cancellation cost, which the Conveyancing Attorney will deduct from the Seller's proceeds of the sale. These costs will amount to approximately between R4 000.00 and R6 000.00.

The bank will further forward the original title deeds (Bond Deed and Title Deed) to the Bond Cancellation Attorneys. The existing title deeds must be lodged in the Deeds Office, together with the transfer documentation, to enable the Deeds Office to transfer the property to your purchaser.

Upon cancellation of the existing bond the Bank will cancel the short-term building insurance should the seller wish for same to be cancelled and not ceded to a new property.

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### **\*\*\*PENALTY INTEREST / EARLY TERMINATION CHARGE**

The current Bank / Financial Institution may charge a penalty / early termination charge. This is a penalty charged by the Bank when the seller cancels the existing Bond, earlier than the period as determined in the Mortgage Loan Agreement signed by the seller when he first purchased the property.

Normally the seller must give the Bank 90 days' written notice of his intentions to cancel the bond to ensure that the penalty amount is zero by the time registration takes place. The penalty amount will decrease daily for the period of 90 days.

It is however strongly advised that a seller contact the Bank, prior to placing the property in the market, to determine in advance whether a penalty interest will be applicable as well as to determine his exact obligations in terms thereof.

The seller can be proactive by advising us, as the Conveyancing Attorney, of his intention to cancel the existing bond prior to placing the property in the market. We will then notify the bank of your intention by requesting cancellation figures. This service is provided free of charge.

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### **5. PROPERTY RATES AND TAXES – CLEARANCE CERTIFICATE**

Section 118(1) of the Local Government Municipality Act 32 of 2000 states that the Local Authority (Municipality) must certify that all amounts due to the Local Authority in connection with service fees, water and electricity, property rates, other municipal taxes, levies and duties during the preceding two years until the date of registration are paid in full by the seller.

The Conveyancing Attorney will request clearance figures from the Local Authority. The Local Authority will issue the clearance figures, which will contain all arrear amounts, plus rates and taxes calculated four months in advance.

The seller will be liable for the payment of the issued clearance figures before the Local Authority will issue a clearance certificate. The clearance certificate must be lodged in the Deeds Office together with other transfer documentation for registration purposes. After registration of the property, the Local Authority on the relevant portals will calculate the pro rata refund due to the seller from date of registration, until date of payment made, which credit (if applicable) will be refunded to the seller. We, as the Conveyancing Attorneys, will advise the Municipality Local Authority (on the relevant portals) of the registration to enable the said Local Authority to start the process of amending their records pertaining to the change of ownership and the processing of the refund.

However, the issuing of the refund by the Local Authority is usually a lengthy and time-consuming process and we will provide the seller with the necessary documentation to follow up on the refund directly with the Local Authority. Our offices can also provide the seller with a reliable independent consultant who can assist with the fast and efficient recovery of the said refund.

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### **6. PROPERTY LEVIES - HOME OWNERS' ASSOCIATION/BODY CORPORATE – CLEARANCE CERTIFICATE**

The same principle relating to the municipal account and clearance certificates, mentioned in Paragraph 5 above, applies to the levies of a body corporate in a sectional title scheme and the levies of a home owners' association. The property can only be transferred with a levy clearance certificate from the body corporate or home owners' association certifying that all the levies of the seller have been paid in full.

The Managing Agent, of property to be transferred, will issue levy clearance figures upon the Conveyancing Attorney's request, which usually consists of a clearance certificate fee, all outstanding levies and two months' levies in advance.

The seller will be liable to pay the clearance figures, upon payment of which a clearance certificate will be issued. These certificates are lodged as part of the transfer documents at the Deeds Office.

As with your municipal account, the home owners' association and/or body corporate, will on notification of registration by the Conveyancing Attorney, adjust their journals and refund to the seller the pro rata amount paid in excess, from date of registration into the name of the purchaser.

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## 7. ELECTRICAL COMPLIANCE CERTIFICATE

The Occupational Health and Safety Act prescribes, through the Electrical Installation Regulations of 2009 that every owner of a property must be in possession of an Electrical Certificate of Compliance. This is a Certificate issued by a qualified and registered electrician, certifying the safety of the electrical installation on the property. The Agreement of Sale will contain a clause which will obligate the seller to obtain, at his cost, an Electrical Compliance Certificate.

The said certificate must be delivered by the seller to the Conveyancing Attorney as soon as possible after acceptance of the Agreement of Sale. The latest developments with all financial institutions are that the Electrical Certificate of Compliance must be lodged with the bank who granted the new bond to the purchaser. Any delay by the seller to provide the said certificate timeously and on request of the Conveyancing Attorney will cause a delay at the Bank to provide the proceed for lodgement at the Deeds Office.

Should you already be in possession of an Electrical Compliance Certificate, it can be utilised and ceded to the purchaser, provided that it is not older than 2 (two) years and provided further that no electrical alterations were made to the electrical system at the property since date of issue of the certificate. If alterations have been made to the property electrical system after your Electrical Compliance Certificate was issued, a new Electrical Compliance Certificate must be issued upon acceptance of the Offer to Purchase.

Do not hesitate to contact our office for the contact details of a reliable independent electrical contractor to issue an Electrical Compliance Certificate for your property.

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### 7.1 Electric Fence Certificate

Regulation 12 of the Electrical Machinery Regulations imposes an obligation on the owner of an electric fence system to have an electric fence system certificate of compliance. The requirement to have an Electric Fence System Certificate does not apply to a system in existence prior to 1 October 2012. However, as with an Electrical Certificate of Compliance, it will be required where an addition or alteration is effected to the system or if there is a change of ownership of the property on which the system exists if the change of ownership takes place after 1 October 2012.

The Electric Fence System Certificate is separate from an Electrical Compliance Certificate and therefore an additional requirement if the property has an electric fence system.

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## 8. GAS CERTIFICATE - CERTIFICATE OF CONFORMITY

The Occupational Health and Safety Act also prescribes in Regulation 17(3) of the Pressure Equipment Regulations that if a property is equipped with a liquid gas installation, a Certificate of Conformity must be issued and delivered to the purchaser in respect thereof. This certificate can be issued by an authorised person registered as such with the Liquefied Petroleum Gas Safety Association of Southern Africa (LPGAS), after he has inspected the installation, and is satisfied that it is safe, and leak free.

As with the Electrical Certificate of Compliance the Conveyancing Attorneys will request same from the seller and provide the purchaser with the Certificate of Conformity upon registration of the property.

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## 9. BORER BEETLE AND TERMITE CERTIFICATE

In the Province of Gauteng, it is unusual for a seller to provide a Borer Beetle Certificate to the purchaser but could however be requested by the purchaser, which will then be inserted as a special condition in the offer to purchase. These certificates are normally requested by the financial institution or the purchaser for properties situated in areas where borer beetles are commonly found. Similarly, there are no regulations that require a seller to provide a Termite Certificate when selling a property and as such there is no obligation on the seller to deliver same to the purchaser, unless contractually obligated. However, there is an obligation on a seller to reveal if the property is infested with termites.

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## 10. SECURE OCCUPATION OF YOUR PROPERTY

In the event that the parties to the Agreement of Sale agree upon occupation before registration, it is of the utmost importance that occupation is only given when the transaction is fully secured. The seller must ensure that the necessary addendum be drawn up to stipulate the amount, date and conditions of occupation, should the occupation date not be specified in the Agreement of Sale.

If the transaction is not secured (guarantees fully delivered) before occupation is given, then the seller runs the risk that the transaction might not proceed and that the seller will have to evict the purchasers by way of litigation proceedings should they fail to vacate the property. Eviction proceedings can be costly and time consuming.

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## **11. SIMULTANEOUS TRANSFER OF YOUR PURCHASE AND SALE**

In the event that the seller wishes to purchase a property with the proceeds of his sale, an Offer to Purchase on the new property can be made, before the transfer of seller's current property transfer is finalised.

The seller should however ensure that the new Offer to Purchase is made subject to the successful registration of his existing property. The wording of this condition is of great importance and the seller is welcome to contact us to assist with the drafting of such condition in his new offer. We will then ensure that the sale and purchase transactions are synchronized for registration purposes, should the parties involved agree to this.

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## **12. ESTATE AGENTS PROFESSIONAL FEE**

Most properties are sold by an estate agency and as a general rule the estate agent, who is the effective cause of the sale, is entitled to a professional fee. The seller will be liable for the payment of the estate agent's professional fee (commission) upon registration of the property into the purchaser's name.

To avoid any dispute with regards to the payment of the professional fee, the seller and the estate agent must conclude a written agreement that stipulates the terms of payment as well as the amount that the agent will be entitled to receive.

In the event that a seller receives an offer to purchase directly from the purchaser, he should ensure that the prospective purchaser was not introduced to the property by an estate agent. If the purchaser was introduced to the property by an estate agent, even if the seller has no knowledge thereof, the seller will still be held liable for the payment of the professional fee.

To avoid this situation an additional condition must be inserted into the Agreement of Sale, where the purchasers confirm that they were not directly or indirectly introduced to the property by an estate agent and that they specifically exempt you from any commission claims.

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## **13. PRINCIPALS OF THE LAW**

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### **13.1 Financial Intelligence Centres Act – (FICA)**

As from the 1 of July 2003 the Financial Intelligence Centre Act (hereinafter referred to as FICA) came into operation and a number of enterprises and institutions became obligated to comply with regulations of the Act. Estate Agents, Banks and Attorneys are some of the institutions tasked with compliance to the regulations of this Act.

We, as Conveyancing Attorneys are obligated by FICA to establish, verify and certify the identity of all our clients and to keep proper record thereof. The purpose of the Act is to prevent money laundering by identifying transactions where money is earned from illegal activities and identifying clients who might be involved in money laundering.

We will request both the seller and the purchaser to provide our offices with specific documentation and information to ensure compliance with FICA.

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### **13.2 Consumer Protection Act (CPA)**

The Consumer Protection Act 2008 (“hereafter referred to as the CPA”) will only apply to transactions involving the supply of goods or provisions of service by a person in the ordinary course of his business in exchange for some form of consideration.

The sale of immovable property falls within the definition of “goods” but not all property transactions will be governed by the CPA. The term “ordinary course of business” is broadly formulated and is defined as property being bought and sold by a person on a continuous basis (developers). Therefore, the sale of your property as a “once-off transaction” is not governed by the provisions of the CPA.

It should be pointed out that where a sale agreement is facilitated by an estate agent, the sale agreement is still entered into by the seller and the prospective purchaser, and essentially remains a “once of transaction”. The relationship between the agent, the seller and the purchaser does however fall within the ambit of the CPA and as such the agent will request you to provide the purchaser with a property information list declaring all defects in and to the property.

The Agreement of Sale will generally contain a “voetstoots” clause that is valid and enforceable if the CPA is not applicable to your transaction. The seller must be wary of the wording of this clause, as in most cases the reference to “voetstoots” will mean as declared in the property information list and Mandatory Disclosure document. Our offices will gladly assist you with the correct wording. If the CPA is not applicable to the transaction, then the purchaser will also not be entitled to a “cooling off” period to cancel the sale as would be applicable to transactions falling under the ambit of the CPA.

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#### 14. THE DEEDS OFFICE

Once all the documentation has been prepared by the various attorneys involved, the costs have been paid by the purchaser and the guarantees delivered, the documents will be prepared for lodgement at the Deeds Office.

There will be three attorneys involved in transactions where a new bond will be registered and the existing bond is to be cancelled. The respective attorneys are referred to as the bond registration attorney and the bond cancellation attorney. All three attorneys must be ready for lodgement, for the transaction to be lodged and linked simultaneously at the Deeds Office.

We as the Conveyancing Attorney will arrange simultaneous lodgement with the said attorneys where applicable. After the transfer documents have been lodged in the Deeds Office, the documents will follow a process of examination of 3 levels, which will take approximately 5 – 10 working days.

Once all 3 levels of examination are completed, and the documentation are deemed to be correct by the Deeds Office, the documentation will be sent through for Preparation. Preparation is a period after examination afforded by the Deeds Office to “prepare” for registration. In this period all attorneys involved will ensure that their financial position relating to the transaction is fully guaranteed and that the matter is ready for registration. Once all the attorneys are ready for registration, the matter will be put through for registration for the following day.

On date of registration the Deeds Office will certify the documents as registered and the Attorneys will advise the respective clients of registration whereafter the guarantees will pay out accordingly on advice of the respective attorneys.

The Conveyancing Attorney will attend to the financial finalisation of the transaction the day following registration.

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#### 15. PROCEEDS OF YOUR SALE

The purchaser's guarantees for the proceeds of the transaction (issued by the bond attorneys), is normally paid electronically into the Conveyancing Attorneys' trust account at midnight on the day of registration. As a result, the finalisation of the finances on the transaction and payment of the proceeds to the seller will be done on the date following registration. A full reconciliation statement pertaining to the transaction will be delivered to both the seller and the purchaser within 48 hours from date of registration.

#### 16. DEDICATED TO EXCELLENCE

**NR Nagel Attorneys is a well-established law firm situated in Lynnwood Glen, Pretoria that offers current and innovative legal solutions to all your property and legal needs. Specialists in Conveyancing, our dedicated staff are happy to meet the heavy demands that go along with property transfers.**

Our biggest investment is to deliver excellent service with a precise focus that is followed through with professionalism. We have an open-door policy which promotes prompt decision making and it is therefore with consistency that we are able to offer our clients peace of mind. At NR Nagel Attorneys we aim to be the first choice for clients looking for dependable service and our clients can truly enjoy the benefits of a firm that is equipped to offer the full spectrum of components. Your transfer will always mean more to us than a process and we understand the need for confident, reliable service.



Kindly visit our website at [www.nrnlaw.co.za](http://www.nrnlaw.co.za) or contact our offices directly on (012) 944 2533 for immediate attention.