10 Common Delays in Property Registrations
Discussion on frustration borne by both Conveyancers and Estate Agents
1. WHEN CASH IS NOT CASH

• In deed of sale: clause indicating cash on request from Conveyancer
• Problem: cash from another deal; cash from pension fund; cash from family member, etc.
• Result: delay in transfer, upset Seller
• Solution: Obtain proof from Buyer of the “cash”.
  • If funds in bank account, make sure no fix term
  • If funds from pension fund, get letter stating same
• NB: Insert a clause under special conditions:
  • “the Seller is aware the funds required for payment of the Selling price will be obtained from....... and that the time period involved will be ..........
2. THE DREADFUL “SUBJECT TO SALE OF PROPERTY” DEALS:

- To safeguard the Buyer’s interest you need to insert the sale of his/her property as a suspensive condition.
- HOWEVER: do not make it subject to the successful “registration” of his property but merely to the successful “sale” of his property.
- DIFFERENCE? The two deals can link once the guarantees of the buyer’s sale are in place, the conveyancer may insist on payment of the cost to proceed with your sale. The alternative is- the buyer’s sale must first register and then the transfer of your sale can commence- difference of approximately 4-6 weeks.
3. “SHORTFALL” IN SELLING PRICE

- When the Purchase price is not sufficient to cover the outstanding bond, commission, rates etc.
- Different from quick sale or my roof property – the bank must still accept shortfall
- PROCEDURE:
  - The Conveyancer must first have guarantees or cash deposit before communicating with the bank;
  - We submit: an estimated final account setting out purchase price, agent commission, outstanding rates and levies, estimated wiring cost, estimated cancellation cost and amount available for cancellation of the bond;
  - the bank requires bank statements and salary slips from Sellers
  - if the bank accepts the shortfall the bank will require that the Seller sign an Acknowledgement of debt to pay of the short after registration;
  - The bank must approve the Acknowledgement of debt;
  - Delay in registration: 8-12 weeks depending on which bank involved;
  - Insert a clause in the deed of sale: This sale is subject to the Seller’s bank approving the shortfall in the selling price within 60 days
- Reason: The Purchaser may elect not to proceed after 60 days.
4. OVERSEAS CLIENTS

- If your Seller is intending to go overseas, make sure a General or Special Power of Attorney is signed;
- If your Buyer is going overseas, you must also have updated FICA available and the Buyer must sign affidavits regarding his marital status and FICA. No person signing in terms of a General/Special Power of attorney may sign an affidavit on behalf of someone else;
- The Apostile requirement: no legal document signed overseas if valid in SA unless the documents are signed in front of Ambassador or Consulate and if they sign in front of Notary, an Apostile document must be completed.
5. MISSING TITLE DEEDS

- If there is no bond registered over the property, make sure the Seller has the original with them. The last page should be originally signed and have a seal from the deeds office;

- If missing, a lost copy can be requested from the deeds office even before the property is sold. This takes 4-6 weeks and can delay the transfer if it is only established at a late stage that the title deed is missing;

- If the bank mislaid the title deed, the transfer is normally delayed because the banks do not immediately authorise the conveyancer to apply for a lost copy at their expense;

- An application for a lost deed is lodged and registered and released before the transfer documents are lodged and not simultaneously.
6. CHECKING TITLE DEED CONDITIONS

• You or your preferred Conveyancer must check the title deed conditions as soon as possible;

• Certain areas has restrictive title conditions in title deeds;

• Types: EG, 8 year clause, use for church purposes, no more than one building to be built upon; The municipality to confirm has been built upon

• It can cause a delay in the registration process and needs to be attended to immediately
7. TAX NRS AND BOND ACCOUNT NRS

• Without the tax no’s of the buyer, the seller and the agent, the transfer duty receipt cannot be obtained via e-filing

• The conveyancer cannot request the Seller’s bank to issue cancellation figures and forward the title deed

• Result: the 90 day penalty period cannot commence resulting in delay in the registration period, the bond attorneys’ bond documents cannot be signed because the ATP cannot be prepared, guarantees cannot be issued

• Agents can assist in obtaining these even before the property is sold.
8. ESTATE TRANSFERS

• If the property is sold by an heir, the estate must first be finalised. Insert a condition in the contract: “the Buyer is aware that the transfer will be delayed until such time when the administration of the estate, in which the property forms an asset, is finalised”;

• If the property is sold by the estate, the power of attorney must be endorsed by the Master’s office. Insert a condition in the contract: “The Buyer is aware that the property forms part of an estate and the sale is subject to the Master endorsing the Power of attorney”
9. INSOLVENT ESTATES

• If the property is sold before the Insolvency, the sale must be accepted by the trustees and at the first meeting of the creditors

• If the property is sold after insolvency, the trustees must accept the contract;

• All transfer documents are signed by the trustees

• Average registration period: one year!

• Insert a clause: the Buyer is aware that the transfer will be delayed due to the Insolvency of the Seller

• Note case law stating that if property sold prior to insolvency, an estate agent’s commission cannot be paid on registration and the agent merely has a concurrent claim against the insolvent estate
10. DEFECTS, REPAIRS AND VOETSTOOTS CLAUSE

- Do not create an expectation by the Buyer that you can solve his/her problem - refer them to the Conveyancer.
- Simple rules: CPA act only applicable where Seller is Developer or Selling property in normal course of business. If not, voetstoots clause still valid;
- If defects Patent and Buyer should have seen it with diligent inspection - Seller not liable in law.
- If defect Latent AND Buyer can proof that Seller was aware of defects and fraudulently withheld - then only does the Buyer have a claim in law.
- The Conveyancer will try to solve the matter or else the Buyer must institute a claim against Seller. No funds may be deducted unless consented to or by court order.
HAPPY SELLING!!!!!!

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