

Steps to Take Prior to Marketing Immovable Property

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INTRODUCTION

This article describes steps that must be taken prior to the marketing or sale of immovable property. The emphasis is on, in the first instance, preparing to market by understanding the parameters of the property being sold and in the second instance looking at various issues that could delay the transfer process.

By focusing on the details set out below, property practitioners and estate agents will be empowered with knowledge and information which will not only ensure a smooth sale and transfer process but will enable the image of a property professional to meet the expectations of the general public.

DEEDS OFFICE SEARCHES

A “property” and “person” deeds office search is the essential first step. Any relevant endorsements such as caveats or attachments should be looked up and understood

The property and registered owner must be fully understood and acted upon where necessary. In the event that the registered owner is an incorporated entity, a company office search should be done on that entity so that the resolutions are signed correctly. Trusts must be acted on in accordance with the trust deed and letters of authority.

TITLE DEEDS

Copies of title deeds can be obtained from the deeds office with the assistance of the conveyancer.

The title deed will indicate whether there are any title deed conditions which could affect the sale or transfer process, such as a restrictive right of way or municipal servitudes. Should these be present, details of these could be obtained by ordering copies of the relevant notarial deeds and SG diagrams.

In the case of panhandle erven or freehold property which have been sub divided a copy of the SG diagram could be obtained to shed light on the exact extent of

the property and any relevant servitudes.

In the case of sectional title property and freehold property there may also be additional title deed conditions such where the scheme falls within a greater home owners association. This fact can be brought to the attention of potential purchasers and where necessary a copy of the homeowner’s association rules and documents obtained.

SECTIONAL TITLE PROPERTY

Copies of Body Corporate rules and financials can be obtained as these could be material to the sale and transfer process. Restrictions imposed by the body corporate such as relating to pet ownership could be revealed. The body corporate financials may indicate a positive or negative financial position that requires disclosure.

Where there is doubt as to the position and extent of the section and any relevant exclusive use areas, the sectional title plans would provide clarity. The managing agents could be consulted on any of the above and on any relevant pending special levies.

THE COST OF OWNING THE PROPERTY SOLD

Purchasers wish to be advised of the cost of owning any property and as such this information should be gathered early in the process.

In the case of freehold property this entails determining the extent of the monthly expenses due to the city council. Bear in mind that some properties pay electricity directly to Eskom and not the city council. In the case of sectional title property, expenses include city council accounts and the body corporate levy payments. In the case of a home owners association, the applicable levy should be determined.

In respect of each of the above, actual statements and accounts should be obtained, particularly with regards to body corporate levies where the levies are sometimes split into the actual levy, a garden levy, a security levy and a DSTV levy or exclusive use area levy etc.

NATIONAL CREDIT ACT - 90 DAY NOTICE PERIOD

In terms of the NCA banks are entitled to charge 90 days interest in lieu of notice to cancel any mortgage bond registered over the property. In other words when cancellation figures are called for the banks may add 90 days' worth of interest to the cancellation amount, this being in addition to the actual amount outstanding on the mortgage bond.

Should transfer be effected prior to expiry of the banks 90 days, the banks will be entitled to the unexpired portion of the 90 days in addition to the actual amount due on the mortgage bond resulting either in a delay in the transfer process so as to register after this period or a loss to the seller where registration takes place earlier.

Sellers can be advised to provide the banks with the required notice alternatively the intended conveyancer could assist in giving this notice during the marketing phase. It may be more appropriate to give notice rather than to call for cancellation figures as the latter will result in the mortgage account being "frozen".

RATES CLEARANCE CERTIFICATES

In order to transfer any property in the deeds registry, a rates clearance certificate (RCC) is required. The unfortunate reality is that if there are any issues or errors on the municipal accounts, these could and do result in delays in the transfer process.

Examples of such issues are disputes with the city council that need to be resolved, the absence of a land value, the omission of a required billing entry such as refuse removal or electricity or water.

These issues can take some time to resolve with the city council and early action is essential to avoid a delay in the transfer process. Sellers can thus refer copies of their account to the conveyancers in order that the account can be assessed prior to sale. If corrective action is required the process can be started and a delay in the transfer process avoided.

SPECIAL POWER OF ATTORNEY

The seller's circumstances should be assessed to determine whether a special power of attorney is required. An example would be where the parties intend on emigrating and one spouse will depart from South Africa prior to sale or registration or where one of the sellers is generally unavailable.

In such cases sellers can be advised to have a special power of attorney drafted which would enable a trusted party in South Africa or the remaining co-owners to sign the necessary sale and transfer documents.

The reason for this requirement is that when transfer documents are to be signed outside of South Africa the deeds registry has various requirements such as that the documents need to be signed at an SA embassy or a foreign notary in which case an authentication process may be required using apostille certificates. The aforementioned are often impractical, time consuming and expensive, thus the alternative of a special power of attorney.

Should this route be followed, the special power of attorney must be drafted by a conveyancer. The deeds office requirements in regard to special powers of attorney are stringent and thus the documents must be correctly drafted to comply with these requirements to be usable. If a seller already has such a document or a general power of attorney, this should be referred to a conveyancer for checking.

CONCLUSION

Being armed with information relating to the property being marketed lends itself not only to professionalism but also lends itself to the ability to make disclosures regarding the property to the purchaser thereof. Much of the information referred to above should be annexed to the sale agreement or handed to the purchasers by way of such disclosure, as prescribed in the Mandatory Discloser Document of the property Practitioners Act.



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