

Guarantees

GENERAL

When a Conveyancer is appointed to attend to the transfer of property, one of the most important functions of a conveyancer is to secure the purchase price of that property.

To secure the purchase price the conveyancer must either have received payment of the purchase price in cash and have the actual funds in his trust account, alternatively the conveyancer must have received a guarantee for the payment of the purchase price issued by a registered South African Bank.

All standard offers to purchase property contain a clause that obliges the purchaser to either pay the purchase price in full in cash, alternatively to secure the purchase price by means of a guarantee issued by a registered South African bank. The guarantee must set out the value of the guarantee and must be payable upon the registration of the property from the Seller to the Purchaser in the Deeds Registry.

The guarantee is usually to be delivered within a specified period of time.

WHAT IS A GUARANTEE?

A guarantee is a document issued by a registered South African Financial Institution that guarantees the payment of funds upon the happening of certain events. Guarantees from foreign banks are not acceptable.

Guarantees are signed by a representative of the issuing bank or an authorized agent who signs the guarantee by virtue of a power of attorney or a resolution.

On registration of transfer of the Property from the Seller to the Purchaser in the Deeds Registry, the conveyancer will notify the issuer of that guarantee of the registration. The guarantee is then payable and funds are paid in terms of that guarantee into the nominated account.

THE SOURCE OF THE GUARANTEE

The source of the guarantee depends on the terms of the individual agreement entered into. If the purchase price is to be secured by a mortgage bond, the guarantee will be issued by the bank who granted the mortgage bond. This is done with the assistance of the attorneys appointed to register the mortgage bond.

By **Marius van Rensburg** (Partner)

30 March 2025

If the purchase price is to be secured in cash, there are two ways to issue the guarantee. The first method would be for the purchaser to pay the funds into the conveyancer's trust account and allow the attorney to issue the necessary guarantee. The Purchaser will further receive interest on the funds in the Conveyancer's account. It must be noted that the interest earned on the funds held in the Conveyancer's account could be considerably less than that earned if held with the Purchaser's own bank.

The second method would be for the Purchaser to leave the funds in his banking account and request his bankers to issue the required guarantee. The conveyancers would provide the guarantee requirements. The disadvantage in this method is that the banks do charge a higher fee for the issue of this guarantee. The fee varies from bank to bank, however interest rates are usually preferable.

A MATTER OF TRUST

Purchasers often enquire whether they can effect payment of the purchase price on registration without the issue of a guarantee. The answer to this question is no. The reason being that the conveyancer has a duty to the Seller to secure the purchase price such that on registration the payment of that purchase price is guaranteed. This is not possible without a valid guarantee.

This is not a matter of trust but rather one of practicality and contractual compliance.



Marius van Rensburg
(Partner)