

# Half Share Transfers

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## INTRODUCTION

Two or more persons may own the same immovable property either in equal or unequal shares. This ownership arrangement may arise from a variety of situations such as married persons, heirs in deceased estates, investors etc.

It happens from time to time that joint owners of immovable property need to dissolve or amend their ownership structure. To do this, they may sell the property to a third party or one party can take transfer of the other party's share in the property. The purpose of this article is to provide information around these half share transfers. It must be noted that the same process explained below would apply regardless of the shareholding in the property, i.e. 25%, 33,3%, 75% etc. being transferred.

## CAUSA

The first consideration in these transfers is determining the causa or the "reason" for the transfer. There are limited causa in our law. These include: divorce, court order, inheritance, donation, expropriation and sale.

Where spouses own immovable property jointly and they get divorced and one spouse is entitled to the share of the other, such a transfer is pursuant to the divorce court order and this is the causa for such transfer. In cases where one spouse bequeaths a half share in a property to the remaining spouse, inheritance is the causa. The transfer in both these examples are exempt from transfer duty.

In other cases, sale is the only viable causa. Donation may be an option however the obligation to pay 20% donations tax on the value of the share in the property donated must be considered. (Note however that donations between spouses are exempt from donations tax, regardless of the value of the donation).

Thus, save in the exceptions above, a sale agreement must be drafted between the parties where the half (or any) share in the property is sold from one share owner to another.

## THE PURCHASE PRICE IN THE CASE OF A SALE

The purchase price must market related and the sale agreement needs to stipulate this market related value. It must be borne in mind that SARS is entitled, per the Transfer Duty Act to transfer duty on the "fair market" value of the property. SARS is further entitled to Capital Gains Tax (CGT) based on the same fair market value. Transfer duty is calculated by determining transfer duty on the full value of the property and dividing this by the share transferred and not only on the lower value of the half share being sold.

Fair market value is determined using two estate agent valuations. These valuations must not be stipulated as a "parameter" value but rather a definite value inasmuch as SARS may assess the property for transfer duty on the highest of the two values.

The sale agreement must provide for payment of the purchase price of the share being sold, after cancellation of any mortgage bond (if applicable). The agreement should be standard in the sense that it should contain all the usual clauses as a normal sale would contain, including clauses relating to electrical compliances etc. (this may be a condition of a new mortgage bond).

## EXISTING MORTGAGE BOND

In the event of the property being subject to a mortgage bond, this bond must be dealt with. There are three options.

The first is to pay up the bond and cancel same. The second that the purchaser registers a new mortgage bond in order to cancel the existing bond. The third is for the purchaser to make application to the existing bondholder to take over the mortgage bond solely. This is known as a Section 57 Substitution of Debtor. In this latter case, the one advantage is that the conveyancing tariff allows for a 25% reduction in registration fees.

In the event of the bond not being cancelled, the purchase will need to make application to the banks as per usual and will have to qualify for the bond in their own name and on their own merit.

This requirement must not be underestimated as a factor to the success of the transaction.

## **CONCLUSION**

It is important to consult a conveyancer to assist in the above transfers.



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